

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

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JAN 12 2009

Copyright Royalty Board

In the Matter of)

)
Distribution of the 1999 and)
2000 Satellite Royalty Funds)
_____)

Docket No. 2008-5 CRB SD 1999-2000

In the Matter of)

)
Distribution of the 2001, 2002)
and 2003 Satellite Royalty Funds)
_____)

Docket No. 2005-2 CRB SD 2001-2003

REPLY OF
THE PHASE I PARTIES
TO IPG COMMENTS

The undersigned representatives of all Phase I categories ("Phase I Parties") submit the following reply in opposition to the Independent Producers Group's ("IPG") "Comments To Phase I Parties' Request For Collateral Proceeding Or Further Distribution" (dated January 6, 2009) ("Comments") and in support of their Motion To Initiate A Collateral Proceeding Or, In The Alternative, To Make A Further Distribution Of Royalties Pursuant To Section 801(b)(3)(C) of the Copyright Act" (filed December 29, 2008) ("Motion").

1. IPG says it "welcomes the opportunity . . . to demonstrate . . . the validity and extent of its claims in the Devotional Programming category." Comments at 2. Thus, it does not "oppose" the Phase I Parties' request that the Copyright Royalty Judges ("Judges") initiate a

collateral proceeding under 17 U.S.C. § 803(a)(2). *See* Comments at 2 & 10.¹ However, IPG improperly seeks to convert that proceeding into a Phase II inquiry -- where the Judges must determine the size of IPG's purported claims in comparison to the claims of "all other claimants in the Devotional Programming category." *See id.* at 2; *see also id.* at 10 ("While a tentative Phase II resolution may seem premature to the institution of Phase I proceedings, IPG welcomes the opportunity to demonstrate the existence and strength of its claims relative to the other devotional claimants.").

There is no need for the Judges to conduct such a "premature" "tentative" Phase II proceeding to assess the relative value of IPG's purported claims. The sole purpose of the collateral proceeding would be to determine whether IPG may lawfully force all parties into a costly and time-consuming Phase I proceeding. Only IPG has objected to the Phase I settlement to which all Phase I Parties have agreed; and thus only IPG's right to compel a Phase I proceeding is at issue. For the reasons set forth in the Phase I Parties' Motion, the only relevant questions to be resolved at this stage are (1) whether IPG itself is entitled to receive some portion of the 1999-2003 satellite royalties for devotional programming and (2) whether IPG's objection to the global settlement and further distribution of Phase I royalties is reasonable.

The Phase I Parties are requesting simply that the Judges direct IPG to demonstrate -- either in a collateral proceeding under Section 803(a)(2) of the Copyright Act or in response to a notice of further distribution under Section 801(b)(3)(C) -- that IPG is entitled to receive some portion of the 1999-2003 satellite royalties and that IPG has a reasonable basis for objecting to the global Phase I settlement. The Phase I Parties contemplate that IPG would make a written submission on these issues and the Phase I Parties would respond in writing to that submission;

¹ IPG does not specifically address the Phase I Parties' alternative request for a further distribution of 1999-2003 satellite royalties under Section 801(b)(3)(C).

all parties would then have the right to request that the Judges conduct evidentiary hearings to resolve any disputed issues of fact. The Phase I Parties strongly believe the record will reveal whether IPG is entitled to receive any portion of the 1999-2003 satellite royalties. Further, even if IPG is entitled to receive a portion of the 1999-2003 satellite royalties, Phase I Parties intend to show that it has no reasonable objection to the global Phase I settlement agreement; thus, there is no need to conduct a Phase I distribution proceeding to allocate the 1999-2003 satellite royalties.²

2. IPG contends that it “has *already* provided a reasonable basis for objecting” to the Phase I Parties’ global Phase I settlement, citing prior claims that it was not afforded a reasonable opportunity to participate in that settlement. *See* Comments at 5 (emphasis in original). IPG, which had a full week to examine the settlement agreement and to contact any signatory to the agreement, has misstated the facts. Beyond that, IPG’s claims are irrelevant under the law. As previously discussed, it makes no difference whether IPG was involved in the settlement process; Congress contemplated that the Judges may adopt a settlement proposed by some but not all the affected parties even if the objecting party had no opportunity whatsoever to participate in the settlement. *See* Motion at 5-6. In any event, there is no need at this point to assess the reasonableness of IPG’s objection; that assessment should be made in the proceeding requested by the Motion and after IPG demonstrates an entitlement to some portion of the 1999-2003 satellite royalties.

² IPG says it must demonstrate that it has a “significant” interest in the royalties for devotional programming. *See* Comments at 2. To be sure, IPG may not participate in a Phase I distribution proceeding unless it has a “significant interest in [that] proceeding.” *See* 17 U.S.C. § 803(b)(2)(C). However, the Judges make a determination of “significant interest” only after commencement of the Phase I proceeding and the filing of petitions to participate. *See* 17 U.S.C. § 803(b)(2)(A). The very purpose of the Phase I Parties’ Motion is to avoid having a Phase I proceeding commenced to distribute the 1999-2003 satellite royalties.

IPG suggests it might not object to the settlement had the Devotional Claimants agreed to support IPG's request for a distribution of royalties. *See* Comments at 5. Given IPG's troubling history in the copyright royalty proceedings (*see* Motion at 7; *infra* at pages 5-6), the Devotional Claimants' refusal to do so should come as no surprise. While IPG refers to its "prior Phase II settlements in the Devotional Programming category" (Comments at 3), those settlements have no evidentiary value, having occurred either prior to the time that IPG's founder pleaded guilty to falsifying copyright royalty claims and lying under oath in a cable royalty distribution proceeding, *see infra* at page 6, or prior to the time that revelations about IPG's own questionable claims and practices became known.

IPG also says that the Judges may not "approve a settlement agreement that [they have] not seen." Comments at 6. But the Phase I Parties are not requesting that the Judges approve the Phase I global settlement agreement over IPG's objection without the opportunity to review that agreement. The Phase I Parties contemplate that the terms of the settlement agreement between the Devotional Claimants and the non-Devotional Phase I Parties will be part of the record in any proceeding to assess the reasonableness of IPG's objection to those terms, subject to appropriate confidentiality measures.

3. IPG offers no justification for filing an unauthorized sur-reply (without seeking leave to do so) and misrepresenting in its certificate of service the date on which it served that filing upon counsel for the Phase I Parties. *See* Motion at 3 n.1. Instead, IPG attempts to defend its troublesome history with the Copyright Office ("Office"). *See* Comments at 6-8. But that attempt completely misses the point -- that IPG's unauthorized sur-reply and its failure to follow the Judges' service rules are consistent with IPG's history of flouting the rules.

IPG does not deny that history; nor does it deny that the Office previously warned IPG it would be subject to dismissal from cable and satellite royalty distribution proceedings if its noncompliance continued. *See* Order in Docket Nos. 2001-8 CARP CD 98-99, *et al.* at 5-6 (June 26, 2006) (“June 26 Order”) (attached hereto as Exhibit A). Rather, IPG merely reargues its three-year-old motion for late acceptance filed with the Office. *See* Comments at 7-8. The Office, however, rejected each of those arguments, not once but twice. *See* June 26 Order at 3-4; Order in Docket Nos. 2001-8 CARP CD 98-99, *et al.* at 2-5 (April 3, 2007) (denying IPG’s motion for reconsideration of the June 26 Order) (attached hereto as Exhibit B). Ultimately, the Office regarded IPG’s repeated disregard of its rules so egregious as to warn IPG of a possible ban from participating in compulsory license proceedings. *See* June 26 Order at 5-6.

Further, IPG cannot defend overstating its claims in another proceeding. *See* Comments at 8-10. As the Phase I Parties noted, in the 1997 Cable Proceeding, IPG claimed that it represented “dozens of rights holders in the CARP proceedings, including such notable producers as DreamWorks, A&E Television, and the Academy of Television Arts and Sciences” in response to a notification from the Office that its notice of intent to participate was untimely and well *before* any challenge to its claim was made by MPAA, or any party. *See* Independent Producers Group Motion to Accept Late Filing, filed in Docket No. 99-5 CD 97, at 3 and Exhibit B, ¶ 4 (dated September 29, 1999) (attached hereto as Exhibit C).³ IPG further pleaded for its claims to be accepted, stating that “royalties owing to such producers could be forfeited” if the Librarian of Congress did not allow its late-filed notice of intent to participate. *Id.* at 3. IPG’s plea thus flatly contradicts its latest explanation that its statement “was not asserted or intended

³ Following IPG’s motion and representation under penalty of perjury, MPAA pointed out to the Office that the entities that IPG had identified had not filed a claim for 1997 cable royalties. *See* Opposition to Motion to Accept Late Filing, filed in Docket No. 99-5 CARP CD 97 at 5 (dated October 6, 1999) (attached hereto as Exhibit D).

as a statement that any of those parties had claims in the upcoming 1997 Cable royalty proceedings . . . but rather to refute an allegation by the Motion Picture Association of America . . .” Comments at 8.

Moreover, in that proceeding, the Office also concluded that IPG’s filed claim was inappropriate under the Office’s rules, and could have been dismissed pursuant to those rules. *See* Order in Docket No. 2000-2 CARP CD 93-97 at 7 (June 22, 2000) (attached hereto as Exhibit E). Notwithstanding this fatal defect, the Office permitted IPG a one-time exception to its rules to make an evidentiary presentation before the CARP that it properly represented parties entitled to receive 1997 cable royalties. *See id.*, *see also* 66 Fed. Reg. 66433, 66437-40 (December 26, 2001). A review of IPG’s evidence by the CARP and the Librarian resulted in the drastic reduction of IPG’s claims and claimants. *See* Order, Docket No. 2000-2 CARP CD 93-97 Ph. II (PS) (June 5, 2001) (attached hereto as Exhibit F); *see also* 66 Fed. Reg. at 66439 and 66441. These orders fairly illustrate what occurred in the 1997 Phase II Proceeding, and belie IPG’s attempt to white-wash its past conduct.

To fully comprehend why a collateral proceeding is necessary to evaluate the validity of IPG’s claims, one needs to look no further than IPG’s misstatement in its Comments that “no subterfuge or perjury has ever been involved in IPG’s proceedings, and no misrepresentation has ever occurred as to exactly which rights are controlled by IPG.” Comments at 10. This statement is directly contradicted by IPG’s conduct in the 1997 Cable Phase II Proceeding. In that proceeding, Raul Galaz, then IPG’s principal, testified before the CARP on behalf of IPG. Thereafter, Galaz pleaded guilty to “giving materially false sworn testimony in a statutorily mandated administrative proceeding convened by the Library of Congress,” *i.e.*, the 1997 Cable Phase II Proceeding. *See* Plea Agreement in *U.S. v. Raul C. Galaz*, D.C. District Court Case No.

02-230 at ¶ 4 (dated May 29, 2002) (attached hereto as Exhibit G). As the criminal information filed against Mr. Galaz makes clear, the materially false sworn testimony provided by Mr. Galaz was directly related to whether he had obtained the rights to represent certain entities in cable copyright royalty distribution proceedings. *See* Criminal Information in *U.S. v. Raul C. Galaz*, D.C. District Court Case No. 02-230 at 3-6 (dated May 29, 2002) (attached hereto as Exhibit H). IPG's history of fraudulent activity, coupled with Galaz's continued involvement in the company, *see* Motion at 7, weighs strongly in favor of a collateral proceeding to evaluate IPG's entitlement to 1999-2003 satellite royalties.

In citing these facts, the Phase I Parties do not intend to reopen prior proceedings in which IPG's and Galaz's actions have been at issue. But the unique circumstances presented by those prior actions, along with IPG's most recent mischaracterization of them in its Comments, strongly reinforce the Phase I Parties' request that the Judges commence a collateral proceeding to test IPG's assertions as to its entitlement to receive royalties -- rather than allow IPG unilaterally to block a global Phase I settlement based only on bald assertions by its counsel about its claims and its standing as a Phase I party.

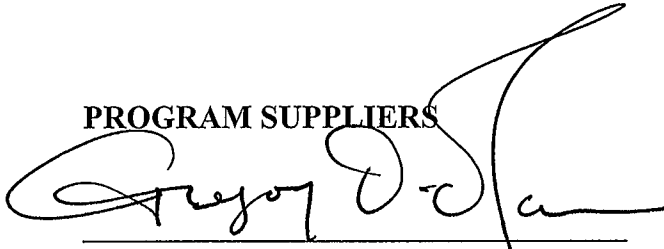
CONCLUSION

For the reasons stated above and in their Motion, the Phase I Parties respectfully request that, before commencing any Phase I proceeding to distribute 1999-2003 satellite royalties, the Judges determine: first, whether IPG is entitled to receive such royalties; and second, whether IPG's objection to the Phase I Parties global settlement and requested distribution of Phase I royalties is reasonable. The Judges may make this determination by conducting a collateral proceeding under 17 U.S.C. § 803(a)(2). *See also* 17 U.S.C. § 801(c) (authorizing Judges to "make any necessary procedural or evidentiary rulings . . . before commencing a proceeding

under this chapter”). Alternatively, the Judges may do so by following the procedures under 17 U.S.C. § 801(b)(3)(C) in response to the Phase I Parties’ request for a further distribution of 1999-2003 satellite royalties. The Phase I Parties will participate fully in either such approach.

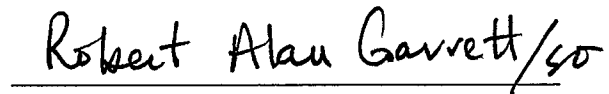
Respectfully submitted,

PROGRAM SUPPLIERS



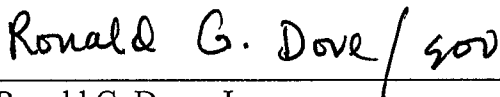
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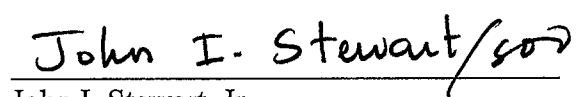
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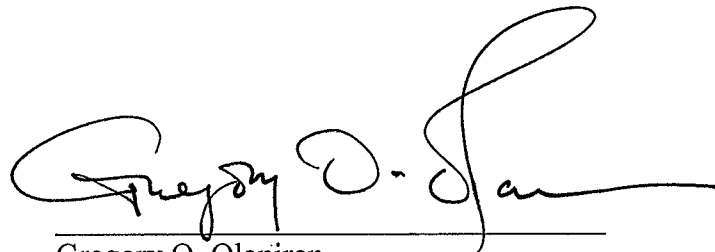
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2009, a copy of the foregoing Reply of the Phase I Parties to IPG Comments, was sent by Federal Express overnight mail to all of the individuals listed below:

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In the Matter of

Distribution of the 1998-2002 Cable
Royalty Funds

and

Distribution of the 1999-2000 Satellite
Royalty Funds

}
} Docket Nos. 2001-8 CARP CD 98-99
} 2002-8 CARP CD 2000
} 2003-2 CARP CD 2001
} 2004-5 CARP CD 2002

} Docket Nos. 2001-5 CARP SD 1999
} 2001-7 CARP SD 2000
}

ORDER

On February 8, 2006, the Office issued an Order in the above-captioned proceedings directing the Independent Producers Group ("IPG") to provide to the Joint Sports Claimants ("JSC") the identity of claimants previously identified in IPG's notices of intent to participate in each of the above-captioned proceedings by no later than February 15, 2006. The Order also provided IPG with an opportunity to respond to the Office's September Orders regarding the current status of its remaining Phase I and Phase II controversies in two of the aforementioned proceedings. Such response, if any, was due by no later than February 13, 2006. Neither document was filed timely with the Office.

On February 16, 2006, IPG filed with the Office its Motion for Acceptance of Late-Filed Response to the September Orders and Notification of Sports Claimants. No party opposed the acceptance of IPG's Notification of Sports Claimants; therefore, the Office grants that part of IPG's motion without discussion. However, the representatives of Phase I claimant categories—namely, Program Suppliers, JSC, Public Television Claimants, National Association of Broadcasters and Broadcaster Claimants Group, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., Canadian Claimants, Devotional Claimants, and National Public Radio ("Phase I Parties")—did oppose the acceptance of IPG's response to the September Orders ("Response"),¹ and IPG filed a reply in support of its motion. For the reasons stated herein, IPG's Motion for Acceptance of Late-Filed Response to the September Orders is denied.

IPG's Motion

Parties' Positions

IPG argues that its Response should be accepted because "IPG complied to the best of its ability" to complete a "leviathan task" in an unreasonable time frame, as evidenced by the fact that IPG e-mailed the Office a courtesy copy of the Response. IPG motion at 3. In addition, "IPG understood that the filing need only have been served by February 13, 2006," and not physically received by the Office by that date. IPG motion at 2. Moreover, IPG argues that "[n]o

¹ JSC has filed a motion to strike the reply brief IPG filed in support of its notification of claimants to JSC. This motion will be addressed in a separate Order.

prejudice will inure to any party, or the Copyright Office," because the filing was "less than three business hours late," as it was delivered to the Office's post office box at "11:09 a.m. on February 14, 2006." *Id.*

In their opposition, the Phase I Parties counter that IPG has been afforded sufficient time to respond to the September Orders since the February 8 Order provided IPG with a second opportunity to submit a response. Opposition at 4-5. Phase I Parties point out that the first opportunity was provided by the Office's December 8, 2005, Order, which required all parties to effect proper service of the comments filed in response to the September Orders. IPG admits to receiving this Order as well as the other parties' comments. The Office's December 8 Order also directed all parties, including IPG, to file any objections or oppositions to said comments by December 22, 2005. *Id.* at 5. No such filing was made. *Id.*

The Phase I Parties also contend IPG's Response was three days, not less than three business hours, late. *Id.* at 4. Moreover, the Phase I Parties fail to see how IPG could reasonably believe that the date of mailing constituted the filing date, especially in light of the fact that the Office previously explained what constituted a timely filing in the 1997 cable distribution proceeding in which IPG was a party. *Id.* at 6-7. They go on to argue that they have been prejudiced by IPG's actions, which have delayed the Office's decision on their request for a further distribution of the 2000-2002 cable royalties. *Id.* at 8-9. IPG refutes these arguments in its reply.

Discussion

Scope of the February 8 Order

Before addressing IPG's motion, the Office must clarify the scope of its February 8 Order. As the Office discussed in that Order, IPG had not received copies of the September Orders pertaining to the proceedings to determine the distribution of the 1998 and 1999 cable funds, Docket No. CARP CD 98-99, or the 1999 satellite funds,² Docket No. CARP SD 1999, due to a clerical error; however, IPG had been served copies of the comments filed by the parties in response to those Orders. Nonetheless, so as not to penalize IPG for the Office's error, the Office provided IPG the opportunity, for the very limited purpose, to add to or supplement information already provided by the other parties in their responses to the September Orders issued in those two proceedings. Therefore, given the narrow scope of the Order, IPG's Response should have addressed only the proceedings regarding the 1998-1999 cable funds and the 1999 satellite funds.

² IPG was served copies of the Office's Orders in the other proceedings in accordance with the service lists for those proceedings as they existed in September 2005.

IPG, however, gave the Order a much more expansive reading, as the majority of its Response opposes and/or objects to filings made in proceedings other than the two just mentioned.³ What IPG fails to appreciate is that any opposition or objection to filings made in proceedings other than those regarding the 1998-1999 cable funds or the 1999 satellite funds are untimely and would not be considered even if the Response were to be accepted. The Office already has afforded all parties, including IPG, the opportunity to file objections or oppositions to filings made in response to the September Orders in those other proceedings. See, Order in above-captioned proceedings at 2 (December 8, 2005). Such objections or oppositions were to be filed with the Office by December 22, 2005.⁴ Id. IPG filed nothing in response to that Order and, therefore, has forfeited its right to file such objections or oppositions now; the February 8 Order does not provide them with a second bite of the apple.

We turn now to IPG's motion as it relates to the single portion of its Response that falls within the scope of the February 8 Order.

IPG's Motion to Accept its Late-Filed Response

We note at the outset that IPG is not the first party to make an untimely filing. Indeed, on other occasions, the Office has accepted documents filed later than IPG's Response. See, e.g., Orders, in Docket No. 2003-2 CARP CD 2001 (April 6, 2005 and October 9, 2003). When evaluating a party's request to accept a late filing, the Office looks at the totality of the circumstances, such as the party's track record of timeliness in CARP proceedings and the party's compliance with the CARP rules, in addition to the arguments made in a party's motion. Here, the Office finds IPG's arguments unpersuasive, and examination of the totality of circumstances reveals a disturbing pattern of instances where IPG has not followed the proper procedure or has purported to operate under a misapprehension of the Office's rules. Consequently, as discussed below, the Office denies IPG's request to accept its Response.

In both its motion and reply, IPG argues that it made a good faith effort to comply with the Office's February 8 Order, even though that Order imposed on IPG the "leviathan task" of having to "review approximately forty (40) different filings . . . relating to [several] separate cable or satellite pools." Motion at 1; see also Reply brief at 2. The Office is unsympathetic to this argument as IPG was required to review the comments in only two proceedings. See supra. Moreover, IPG was served copies of these comments in December 2005. So, rather than having two business days, as IPG asserts, to review these comments, IPG had nearly two months to do so. If IPG chose not to review these comments until it received the Office's February 8 Order, then it is IPG, and not the Office, who made the task "leviathan." Moreover, had IPG determined

³ Specifically, IPG opposes or objects to the following documents: Phase I Claimants' Notice of Partial Settlement and Motion for Further Distribution of 2000, 2001, and 2002 Cable Royalties; MPAA's Joint Notices of Withdrawal of Intention to Participate Regarding 2000 and 2001 Cable Royalties (withdrawing the Notices of Intent of O. Atlas Enterprises, Inc.; Sandra Carter Productions, Inc.; Ward Productions, Inc.; and Fintage Publishing); and MPAA's Motion for Final Distribution of 1996-1997 Satellite Funds.

⁴ MPAA's Joint Notices of Withdrawal of Intention to Participate Regarding 2000 and 2001 Cable Royalties were not covered by the Office's December 8 Order, as they were filed on December 14, 2005. However, in accordance with § 251.44(g), oppositions or objections to these filings were due by no later than December 23, 2005.

that it was unable to comply with the Order within the specified time, it could have requested an extension of time in which to file its Response; yet it chose not to do so. For the foregoing reasons, IPG's assertion that the Office's deadline was "unreasonable" does not provide a sufficient basis upon which to grant IPG's motion to accept its late-filed response to the September Orders.

IPG's second argument for acceptance of its Response is two pronged: First, IPG asserts that the Response was "less than three business hours" late; and, second, "IPG understood that the filing need only have been served by February 13, 2006." Motion at 2. With regard to the first prong, IPG fails to appreciate that late is late; and any time a pleading is late, whether by minutes or days, the late party must move for the acceptance of the late pleading and all other parties afforded an opportunity to weigh in on the motion. As such, late-filed pleadings slow down the process—here, the Office's decision on the Phase I Parties' motion for further distribution of the 2000-2002 cable royalties—and require the expenditure of Office resources in ruling on the motion, especially where, as here, other parties file an opposition. Therefore, while the Office does consider, among other factors, the lateness of a pleading in making its determination on whether or not to accept it late, no party should assume, as seems to be the case here, that a filing made a few minutes or hours late will be accepted as a matter of course.

With regard to the second prong, the Office notes that it is the responsibility of those participating in a Copyright Arbitration Royalty Panel ("CARP") proceeding to familiarize themselves with the requirements for such participation, including compliance with filing deadlines. As such, IPG's misapprehension that it had complied with the Office's February 13 deadline by mailing its Response on that date is not a sufficient reason to grant IPG's motion. As the Phase I Parties point out, IPG's position is made more untenable by virtue of its participation in the 1997 cable distribution proceeding where the Office defined for all parties what constituted a timely filing. Order, in Docket No. 2000-2 CARP CD 93-97 (January 12, 2000).

Consequently, IPG's arguments supporting acceptance of its late-filed Response are not particularly persuasive and are less so when coupled with IPG's pattern of noncompliance with the Office's rules.

IPG's Noncompliance with Office Rules

As mentioned above, IPG has exhibited a seeming indifference to the Office and its rules, as evidenced by its repeated failure to comply with the rules governing the service of pleadings.⁵ Most disturbing, however, is the fact that IPG blatantly ignored an Office Order. On December 8, 2005, because many parties, including IPG, failed to properly serve their comments in response to the September Orders, the Office issued an order in the above-captioned proceedings directing all parties who had filed comments to effect proper service in accordance

⁵ In addition to the service problems discussed herein, the Phase I Parties raise two other issues, namely, IPG's failure to comply with the Office's Order dated February 22, 2006 (requiring IPG to refile and reserve its Response due to missing pages; IPG served only the missing pages instead of the entire document) and its failure to comply with § 251.44(e)(2) (requiring provision of party's address and telephone number). Opposition at 4 n.3 and 6 n.5. While the Phase I Parties are correct, the Office will focus on IPG's more egregious transgressions. See *infra*.

with 37 C.F.R. § 251.44(g) by December 13, 2005. See, Order, in above-captioned proceedings, dated December 8, 2005. IPG failed to comply with this Order and to date has offered no explanation for its failure to do so.⁶

IPG's disdain toward effecting proper service is evidenced further by the fact that none of the filings made by IPG since issuance of the December 8 Order have been served properly, despite the Office's reference to the regulation governing service in the December 8 Order. For example, the motion at issue here, according to the certificate of service,⁷ was served on the other parties by first-class mail, in direct contravention to 37 C.F.R. § 251.44(g), which states, in pertinent part, that "all motions, . . . , oppositions, and replies [must be served] on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed." All pleadings filed by IPG have been served either by first-class or priority mail, neither of which is an acceptable means under the regulations. IPG defends its use of these alternative means by arguing that the rule

requires that service be accomplished no later than the day (presumably business day) following filing with the Copyright Office. Notwithstanding, if a filing schedule is set by the CARP, and IPG files its document prior to its deadline, as long as service is accomplished prior to the deadline otherwise directed by the CARP, no prejudice has occurred.

IPG reply brief at 4 n.6.

IPG's interpretation simply is wrong. Again, the rule states that service must be "by means no slower than overnight express mail on the **same day the pleading is filed**" with the Office. 37 C.F.R. § 251.44(g) (emphasis added.) Therefore, in order for a party to be in compliance with the rule, the other parties must receive the pleading the next business day after it is filed with the Office, even if the pleading is filed prior to a deadline set by the Office. No party, including IPG, can circumvent the rule by a unilateral determination that no prejudice to the other parties will result from its use of alternative service methods. Parties are bound by the regulations and may not vary from their requirements unless allowed to do so by the Office. Consequently, a party who uses first-class or priority mail simply does not comply with the rule.

While the Office will excuse a party's occasional lapse in following the regulations, even those governing proper service, the Office cannot and will not tolerate a party's persistent failure to comply as is the case here. IPG's repeated failure to effect proper service even after the Office had cited the appropriate rules demonstrates a flagrant disregard of the rules governing these proceedings and of Orders issued therein, as well as a lack of respect for the Office and the other

⁶ IPG cannot claim that it was unaware of the December 8, 2005, Order or of its failure to comply with that Order, as IPG confirmed receipt of the Order, and the Office has made reference to its noncompliance. See Order, in above-captioned proceedings, dated February 8, 2006, at 2 n.1.

⁷ The Certificate of Service actually refers to the service of IPG's Response but the Office presumes that the motion was served in a similar fashion based on statements made in the Phase 1 Parties' opposition. Opposition at 4 n.3.

parties in these proceedings. Administrative proceedings cannot be run effectively or efficiently where parties to the proceeding disregard the carefully developed procedures governing the process, and a party will be, and indeed has been, dismissed from a proceeding for failure to adhere to its rules and comply with its orders. See, Order, in Docket No. 2002-1 CARP DTRA3 (August 15, 2003) (dismissing party in rate adjustment proceeding for failure to comply with Office Order and with service requirements); Order, in Docket No. 95-1 CARP DD 92-94 (May 9, 1996) (dismissing two participants in a distribution proceeding for failure to comply with procedural and substantive rules for the submission of written direct cases, including failure to effect proper service on the parties in the proceeding). Accordingly, any future failure by IPG to comply with the Office's regulations, especially those governing the proper service of pleadings, will result in IPG's dismissal from these proceedings.

In relation to the motion at hand, the Office will not reward IPG for its repeated transgressions by accepting its late-filed Response.

Wherefore, **IT IS ORDERED** that IPG's Motion for Acceptance of Late-Filed Response to the September Orders and Notification of Sports Claimants is **GRANTED IN PART, DENIED IN PART**. The Office accepts IPG's Notification of Sports Claimants because its request was unopposed; it does not accept IPG's Response to the September Orders.

SO ORDERED.

Marybeth Peters
Register of Copyrights

BY:

Tanya M. Sandros
Tanya M. Sandros
Associate General Counsel

DATED: June 26, 2006

10

4-3-07



United States Copyright Office

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

In the Matter of

**Distribution of the 1998-2002 Cable
Royalty Funds**

and

**Distribution of the 1996-2000 Satellite
Royalty Funds**

}
}
}
}
}
}
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}
}
}

Docket Nos.

2001-8 CARP CD 98-99

2002-8 CARP CD 2000

2003-2 CARP CD 2001

2004-5 CARP CD 2002

Docket Nos.

2000-7 CARP SD 96-98

2001-5 CARP SD 1999

2001-7 CARP SD 2000

ORDER

On June 26, 2006, the Copyright Office issued an Order in the above-captioned proceedings¹ denying, in pertinent part, the motion of the Independent Producers Group ("IPG") to accept its late-filed Response to the September Orders² ("Response"). The Office based its decision on what it found to be a pattern of IPG's failure to comply with the rules governing the Copyright Arbitration Royalty Panel ("CARP") process, especially with regard to service of filings on other parties.³

On July 17, 2006, the Office received from IPG a motion seeking reconsideration of the Office's June 26 Order, arguing that the denial was based on "mistatements (sic) and mischaracterizations" contained therein. On July 21, 2006, the Office issued an Order setting forth the pleading cycle for this motion and instructing the parties on the proper way to file and

¹ The caption of the June 26 Order did not reference Docket No. 2000-7 CARP SD 96-98 as that proceeding is closed. The Office has made a final distribution of those funds. *See*, Order in Docket No. 2000-7 CARP SD 96-98 (dated January 12, 2006). Although the June 26 Order did include Docket No. 2001-5 CARP SD 99 in its caption, that proceeding also is closed as the Office determined that no further distribution of those funds would be made. *See* Order in Docket No. 2001-5 CARP SD 99 (dated June 26, 2006).

² In September 2005, the Office issued Orders in each of the above-captioned proceedings establishing a negotiation period and requesting from the parties an update on the status of any remaining Phase I and Phase II controversies in an effort to distribute whatever monies it could before terminating these proceedings and jurisdiction assumed by the Copyright Royalty Judges. The parties were required to notify the Office of the continued existence and the extent of Phase I and Phase II controversies and/or file any notices of settlement and motions seeking a full or further partial distribution of the royalty funds.

³ The Office also noted that the majority of IPG's Response was beyond the scope of the February 8, 2006, Order to which it was responding. *See* Order in above-captioned proceedings at 2-3 (June 26, 2006).

serve the responsive papers. In accordance with this Order, the Phase I Parties⁴ filed a joint opposition to IPG's motion for reconsideration basically stating that IPG had raised no new arguments which would warrant the Office's reversal of its decision. Similarly, IPG timely filed its reply.

On July 17, 2006, the Office also received from IPG a motion to compel production of agreements relating to settlements of devotional programming category funds. Devotional Claimants filed its opposition to the motion on August 2, 2006, and IPG filed a timely reply.

IPG's Motion for Reconsideration

Parties' Positions

IPG argues that the Office should reconsider its denial of IPG's motion to accept its late-filed Response for several reasons. First, IPG asserts that the Office contributed significantly to and was responsible in part for IPG's confusion surrounding the existence of and its obligation to respond to the aggregate of the September Orders. Motion at 3-6. Second, IPG asserts that the Office used the wrong criteria in evaluating IPG's motion to accept a late filing; specifically, the Office should have evaluated the motion under the same two-part test that it applies in evaluating a late-filed Notice of Intent to Participate. *Id.* at 6-15. Third, IPG contends that the Office "dramatically overstates 'IPG's Noncompliance with Office Rules.'" *Id.* at 15-20. Finally, IPG asserts that the Office exceeded its authority by issuing the September Orders to "the extent that the Office relies thereon to terminate proceedings." *Id.* at 20-22.

In their Joint Opposition, the Phase I Parties urge the Office to stand behind its June 26 Order in its entirety as the determinations made therein were justified. Opposition at 2-4. The Phase I Parties argue that IPG brings forth no new arguments justifying its disregard of the Office's rules and therefore provides no persuasive grounds for the Office to reverse its decision. *Id.* at 4. The Phase I Parties also point out that the Office was not required to nor should it have published in the *Federal Register* the September Orders. *Id.* at 4-5. Finally, the Phase I Parties emphasize the extent of the prejudice they have suffered as a result of IPG's conduct. *Id.* at 5.

In its reply, IPG asserts that the Phase I Parties' failure to address certain facts raised in its motion amounts to a concession to their veracity.

Discussion

⁴ The Phase I Parties are comprised of the representatives of the Phase I claimant categories, namely, Program Suppliers, Joint Sports Claimants, Public Television Claimants, National Association of Broadcasters and Broadcaster Claimants Group, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., Canadian Claimants, National Public Radio and the Devotional Claimants.

Much of IPG's motion consists of arguments that were addressed by the Office in its June 26 Order. To that extent, such arguments will not be revisited here. Therefore, the Office sees no need to, and indeed will not, address the arguments made by IPG concerning the proper standard under which to evaluate its Motion to Accept its Late-Filed Response to the September Orders. These arguments, or variations thereof, were fully addressed in the June 26 Order. Similarly, the Office stands behind its findings regarding IPG's pattern of non-compliance with the Office's rules, especially when that pattern continues, as evidenced by IPG's service of the instant motion by priority mail.⁵

The Office does feel compelled, however, to briefly address IPG's two remaining arguments. We turn to them now.

IPG's Receipt of the September Orders

The Office now clarifies the record with regard to IPG's receipt of the September Orders. The Office served each of the September Orders on the parties in each of the above-captioned proceedings in accordance with the contact information as it existed on the respective service lists at the time of their issuance. In September 2005, the Office's records showed IPG as an active participant in only four of the seven proceedings, namely, the proceedings to determine the distribution of the 2000 satellite funds, the 2000 cable funds, the 2001 cable funds and the 2002 cable funds. IPG's current representative, however, was listed as such on only the service list with regard to the 2002 cable funds. Consequently, the current representative received Orders only for those proceedings for which she was listed as IPG's representative.⁶ The Office conveyed this information in a communication with IPG. See E-mail from Gina Giuffreda, Attorney Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (February 10, 2006, 1:18:39 PM EST) (on file with the Office).

Subsequently, the Office, on its own, provided the remainder of the September Orders to IPG. First, once the Office discovered its error that IPG had erroneously been removed from the service lists for the proceedings to determine the distribution of the 1998 and 1999 cable funds as well as the 1999 satellite funds, it provided IPG with copies of the September Orders for those proceedings and afforded IPG an opportunity to respond to them. See Order in above-captioned proceedings at 3 (February 8, 2006). Soon thereafter, the Office, again on its own, provided to IPG the September Orders pertaining to the 2000 and 2001 cable funds. See E-mail from Gina Giuffreda, Attorney Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (February 10, 2006, 1:18:39 PM EST) (on file with the Office) ("For your convenience, I am forwarding to you the September Orders issued by the Office

⁵ IPG also served its motion seeking to compel production of a settlement agreement among the Devotional Claimants by priority mail.

⁶ Actually, IPG's current representative received two of the September Orders. The Office has discovered that it also inadvertently served her with the Order regarding the distribution of the 2000 satellite funds even though Raul Galaz was listed as the sole representative on the service list.

regarding the distribution of the 2000 and 2001 cable royalties. Consequently, you will now have all of the Orders issued in September.”⁷). Moreover, in a further effort to assist IPG, the Office offered to, and did, provide to IPG a copy of the service lists for the four proceedings in which it had IPG listed as an active participant. *See* E-mail from Gina Giuffreda, Attorney Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (December 21, 2005, 12:11:54 PM) (on file with the Office).

At no time did the Office state that certain of the September Orders did not exist. Indeed, such statement would contradict the plain language of subsequent orders. *See* Orders in above-captioned proceedings at 1 (dated December 8, 2005, and February 8, 2006) (“In September 2005, the Office issued Orders in each of the above-captioned distribution proceedings establishing a negotiation period . . .”). The Office answered all of IPG’s questions as clearly as possible. If IPG still had questions or believed that the Office was providing “misinformation,” then IPG could have requested copies of the Orders referenced in the December 8 and February 8 Orders and/or the dockets in each proceeding to ascertain what Orders had been issued by the Office. While the Office will assist a party where it can, it is the responsibility of a party appearing before the Office, and that party’s responsibility alone, to keep track of the proceedings in which it is an active participant and to determine which documents are needed in order to prosecute its claim and to request such documents from the Office.

Most, if not all, of IPG’s confusion could have been avoided had IPG simply updated its contact information in a timely manner as required by 37 C.F.R. § 351.44(f). IPG admits that it did not fully appreciate this fact.⁸ Motion at 6 n.8.

IPG also appears to be confused about a party’s responsibilities when participating in a CARP proceeding. IPG argues that many of the actions that the Office found objectionable in its June 26 Order were the result of IPG’s unawareness of its obligation to take certain actions. For instance, IPG states that it did not respond to the Office’s December 8 Order because it “was genuinely confused as to its obligation to respond.”⁹ Motion at 6. Similarly, it explains that it

⁷ IPG has not received the September Orders regarding the distribution of the 1996-1998 satellite royalty fees, as the only remaining controversies with respect to these funds existed in the Program Supplier category. IPG withdrew from this proceeding on May 10, 2004. Moreover, as noted earlier, this proceeding is closed as the Office has made a final distribution of these funds. *See supra* n.1. In any event, IPG was served with a copy of the motions seeking final distribution of these funds and had ample opportunity to object if it so chose. *See* Order in above-captioned proceedings (dated December 8, 2005).

⁸ When IPG did attempt to update its contact information, the letter was sent to the Office’s street address, which was not proper under the Office’s rules. *See* 37 C.F.R. § 251.1(c).

⁹ IPG states that it just recently discovered that its December 2005 filings did not have a “Proof of Service” attached to it. The Office finds this puzzling because it noted in the February 8 Order that IPG had not responded to the December 8 Order. Moreover, in a subsequent communication with IPG, the Office specifically stated that no certificate of service was attached to its initial comments. *See* E-mail from Gina Giuffreda, Attorney

(continued...)

"satisfactorily" complied with the regulations governing proper service "after being alerted to the regulation's applicability." *Id.* at 18. The Office notes that it is the responsibility of those interested in participating in a CARP proceeding, and theirs alone, to familiarize themselves with the requirements for such participation. Therefore, despite IPG's arguments to the contrary, it is not the Office's responsibility to point out to the parties which regulations apply to a particular situation. Rather, parties are bound by all of the regulations at all times and may not vary from their requirements unless allowed to do so by the Office. *See* Order in above-captioned proceedings at 5 (June 26, 2006).

Office' Authority to Issue the September Orders

IPG's argument that the Office exceeded its authority by issuing the September Orders to terminate the above-captioned proceedings and failing to publish them in the **Federal Register** illustrates IPG's misapprehension of the Office's goal here and the CARP process in general.

The Library has the authority "[d]uring the pendency of any proceeding . . . to proceed to distribute any amounts that are not in controversy." 17 U.S.C. § 111(d)(4)(C). The distribution of funds under this provision is an administrative task, which the Library, through the Copyright Office, may undertake at any time during a proceeding, upon its own or the parties' motion, even before the institution of a formal CARP proceeding.¹⁰ Before making an initial distribution, the Office must ascertain the parties to a particular proceeding. The Office accomplishes this task by the solicitation of notices of intent to participate in a proceeding, which it publishes in the **Federal Register** pursuant to 37 C.F.R. § 251.45(a). Since the Office had taken this step in each of the above proceedings, thereby defining the universe of participants in each proceeding, it was not required to publish the September Orders in the **Federal Register**.

After considering IPG's motion, the Office finds that IPG has not presented any new arguments which would persuade the Office to reconsider its denial of IPG's late-filed Response.

IPG's Motion to Compel Production of Agreements

On December 6, 2005, the Office received a notice of partial settlement from Phase I Claimants and a motion for further distribution of 2000, 2001, and 2002 cable royalty fees. IPG

⁹ (...continued)

Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (February 10, 2006, 1:18:39 PM EST) (on file with the Office) ("[O]ur records indicate that you provided no such certificate of service when you filed your comments initially or in response to the December 8 Order.")

¹⁰ IPG does not understand why the Office would "solicit the exact same information" in the September Orders as provided in the initial Notices of Intent to Participate instead of "feel[ing] satisfied to rely on the previously filed 'Notice of Intent' filings." Motion at 21. In an effort to encourage settlement, the Office afforded parties an opportunity to negotiate to see if previously outstanding controversies could be resolved and directed the parties to notify the Office of the outcome of their negotiations.

claims that "counsel for several unidentified parties purported to represent the aggregate of the Devotional Programming category" and joined the December 6 motion on behalf of all Devotional Claimants without informing IPG of the settlements or disclosing the terms. Motion at 2. IPG seeks access to the settlements negotiated on behalf of the Devotional Claimants to determine "whether IPG needs to challenge the Phase I Settlement, or whether IPG instead desires to accept the Phase I settlement and negotiate terms of its Phase II participants in the Devotional Programming category." *Id.* at 3.

Devotional Claimants dispute IPG's underlying contention that it had no knowledge of the terms of the settlement agreement. They contend that IPG and its current principal received the information it now seeks, i.e., the precise percentage amounts for which Devotional claims settled with other Phase I parties, by letter and email during confidential settlement negotiations in December 2005. They also maintain that IPG's reliance on a previous CARP order is misplaced since the order merely required the disclosure of the amount in the disputed fund and did not require the disclosure of the actual agreement. Moreover, Devotional Claimants maintain that IPG had timely notice of the settlement details and sufficient time to object to the settlements, noting that IPG did not file a timely objection upon receiving the relevant information. Devotional Claimants also take issue with IPG's implication that they had not disclosed the identities of their claimants and assert that it is IPG that has failed to provide this information to the detriment of those who have identified themselves.

Discussion

The distribution process relies on good faith negotiations by the claimants and their representatives. IPG had filed its notice of intent to participate in the distribution proceedings of the 2000, 2001 and 2002 royalty fees and, as a result, it has a reasonable expectation that other claimants will negotiate and consult with it concerning any settlement agreement among the Phase I claimants.

Both sides make factual representations about the facts surrounding the negotiations that purportedly did take place. However, the Office was not apprised of any these disputed actions during the pleading cycle established by the Office regarding the Notice of Partial Settlement and the Motion for Further Distribution. *See* Order in above-captioned proceedings (dated December 8, 2005). IPG had an opportunity to raise its concerns with the Office at that time, but it did not do so and cannot be allowed at this late date to undo the settlements that have been reached to date and upon which additional distributions are now based.

Nevertheless, IPG has a valid interest in this information for future negotiations concerning the distribution of the royalty fees among the Devotional claimants and the Office has withheld sufficient funds to address any outstanding controversies between IPG and these claimants. However, as indicated in the initial September orders, the Copyright Office will not be administering further proceedings in this matter. Its intent is only to consider one further distribution of the cable royalty fees in the open proceedings before terminating the proceedings

under the Copyright Arbitration Royalty Panels program and vesting authority for any further proceedings in the Copyright Royalty Judges, the entity created by Congress pursuant to the Copyright Royalty and Distribution Reform Act of 2004. Moreover, such questions, being a mixed question of fact and law, are more suited for resolution before the Copyright Royalty Judges.

Wherefore, **IT IS ORDERED** that IPG's Motion to Compel Production of Agreements relating to Settlements of Devotional Programming Category Funds **IS DENIED, WITHOUT PREJUDICE**. Additional motions concerning these proceedings will not be accepted by the Copyright Office and should be addressed in the future to the Copyright Royalty Judges.

Wherefore **IT IS FURTHER ORDERED** that IPG's Motion to Reconsider Denial of Motion for Acceptance of Late-Filed Response to the September Orders **IS DENIED**.

SO ORDERED.

Marybeth Peters,
Register of Copyrights.

BY:

Tanya M. Sandros
Tanya M. Sandros,
General Counsel.

DATED: April 3, 2007



IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at the City of New York, this 1st day of January, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at the City of New York, this 1st day of January, 2024.



BEFORE THE
LIBRARY OF CONGRESS
COPYRIGHT OFFICE,
WASHINGTON, D.C.

GENERAL COUNSEL
OF COPYRIGHT

SEP 1 1999

RECEIVED

INDEPENDENT PRODUCERS
GROUP MOTION TO ACCEPT
LATE FILING REGARDING
EXISTENCE OF PHASE II
CONTROVERSY AND
NOTICE OF INTENT
TO PARTICIPATE IN
PHASE II PROCEEDINGS
RELATING TO 1997 CABLE
RETRANSMISSION ROYALTY
FUND

Docket No. 99-5 CD 97

INDEPENDENT PRODUCERS GROUP MOTION
TO ACCEPT LATE FILING

1. Introduction.

In response to the notice published by the Copyright Office at 64 Fed. Reg. 41473 (July 30, 1999), Independent Producers Group prepared a document entitled "Existence of Phase II Controversy and Notice of Intent to Participate" (hereafter, the "Notice of Intent"; attached hereto as Exhibit "A"). According to the Federal Register notice, the Notice of Intent was "due" September 28, 1999. Independent Producers Group executed and mailed the Notice of Intent on September 22, 1999, to the address set forth in the Federal Register notice. [See Declaration of Raul Galaz at ¶ 1]; attached hereto as Exhibit "B"].

On the afternoon of September 29, 1999, Raul Galaz received a telephone call from Gina Giuffreda of the U.S. Copyright Office, informing him that the Notice of Intent had been received on September 29, 1999, despite the fact that the mailing envelope reflected a September 22, 1999 postmark. [See Exhibit "B" at ¶

2]. According to Ms. Giuffreda, the date of receipt of the Notice of Intent controls whether the Notice of Intent was timely filed, not the date of postmark. [See Exhibit "B" at ¶2]. For this reason, Independent Producers Group moves the Librarian for leave to accept the previously filed Notice of Intent as timely filed, despite receipt by the Copyright Office one day after the September 28, 1999 deadline.

2. Independent Producers Group Believed In Good Faith That The Date Of Mailing Controlled The Timeliness Of The Filing And, In Fact, Mailed The "Notice of Intent" Sufficiently Prior To The Filing Deadline.

The timeliness of a claim for cable retransmission royalties, filed with the Copyright Arbitration Royalty Panel, is based on the postmark date of the claim, not the date of receipt by the Copyright Office. Consistent with this fact, Independent Producers Group believed in good faith that the postmark date, not the date of receipt, controlled whether the Notice Of Intent would be considered timely. [See Exhibit "B" at ¶3].

Notwithstanding the foregoing, Independent Producers Group mailed the Notice Of Intent almost one week prior to the deadline set forth in the Federal Register. The Notice Of Intent was mailed directly from a U.S. Post Office, Certified Postage, Return Receipt required. [A copy of the Receipt For Certified Mail, bearing a "Sep 22 1999" mark, is attached hereto as Exhibit "C"]. Allowing for normal mail delivery, the Notice Of Intent should have been received well prior to the September 28, 1999 deadline.

3. Phase II Proceedings Have Not Yet Commenced, And Other Phase II Claimants Will Not Be Prejudiced If The Librarian Accepts The "Notice Of Intent".

The Notice Of Intent only serves to preserve the rights of Independent Producers Group with respect to a Phase II participation i.e., Independent Producers Group will not be participating in Phase I proceedings. At this time, even Phase I proceedings have not yet commenced and parties intending to participate in Phase II

proceedings have not yet turned their attention to Phase II negotiations or proceedings. Certainly, receipt by other Phase II participants of the Notice Of Intent within a few days following the otherwise-stated deadline will not prejudice their participation in Phase II negotiations and proceedings.

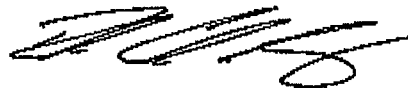
4. Independent Producers Group Would Be Severely Prejudiced If It Cannot Participate In Phase II Proceedings.

Independent Producers Group represents the interests of dozens of rightsholders in the CARP proceedings, including such notable producers as DreamWorks, A&E Television, and the Academy of Television Arts and Sciences. [See Exhibit "B" at ¶ 4]. Because failure to timely file a Notice Of Intent To Participate precludes participation in Phase II proceedings, royalties owing to such producers could be forfeited if the Librarian does not approve the motion submitted herein.

5. Conclusion

For the reasons set forth above, Independent Producers Group respectfully moves the Librarian to accept the Notice Of Intent previously submitted, and deem such filing to have been timely submitted.

Respectfully submitted,



Raul Galaz
Independent Producers Group
438 N. Kilkea Dr.
Los Angeles, CA 90048
(323) 655-7481
(323) 655-7430 (fax)

September 29, 1999

BEFORE THE
LIBRARY OF CONGRESS
COPYRIGHT OFFICE,
WASHINGTON, D.C.

GENERAL COUNSEL
OF COPYRIGHT

OCT 1 1999

RECEIVED

INDEPENDENT PRODUCERS
GROUP COMMENTS ON EXISTENCE
OF PHASE II CONTROVERSY
AND NOTICE OF INTENT
TO PARTICIPATE IN
PHASE II PROCEEDINGS
RELATING TO 1997 CABLE
RETRANSMISSION ROYALTY
FUND

Docket No. 99-5 CD 97

INDEPENDENT PRODUCERS GROUP COMMENTS ON THE EXISTENCE
OF A PHASE II CONTROVERSY AND
NOTICE OF INTENT TO PARTICIPATE

1. Comments on the Existence of a Phase II Controversy.

In response to the notice published by the Copyright Office at 64 Fed. Reg. 41473 (July 30, 1999), Independent Producers Group hereby asserts that while the possibility of settlement is likely with regard to Phase II claimants, no such settlement has been reached by any of the Phase II claimants. Accordingly, a Phase II controversy exists. A hearing will be necessary to resolve that controversy.

2. Notice of Intent to Participate.

In response to the notice published by the Copyright Office at 64 Fed. Reg. 41473 (July 30, 1999), Independent Producers Group hereby submits the following notice of intent to participate in the above-captioned proceedings. If hearings are necessary on Phase II issues involving the interests of movies and syndicated

Exhibit "A"

programming owners (Program Suppliers), religious programming owners (Devotional Claimants), sports programming owners (Joint Sports Claimants), public television programming owners (Public Broadcasting Service) and Canadian programming owners (Canadian Claimants), Independent Producers Group intends to participate in those hearings. Independent Producers Group reserve their right to make additional Phase II claims in the event that rulings by the CARP or the Librarian of Congress, or filings by other parties, make additional claims necessary. In all such hearings, Independent Producers Group intends to represent the producers, syndicators and distributors of programming who have agreed to representation by the Independent Producers Group.

Respectfully submitted,



Raul Galaz
Independent Producers Group
438 N. Kilkea Drive
Los Angeles, California 90048
(323) 655-7481
(323) 655-7430 (fax)

September 22, 1999

GENERAL COUNSEL
OF COPYRIGHT

OCT 1 1999

DECLARATION OF RAUL GALAZ

RECEIVED

1. On September 22, 1999, and on behalf of Independent Producers Group, I executed a document entitled "Independent Producers Group Comments On Existence Of Phase II Controversy And Notice Of Intent To Participate In Phase II Proceedings Relating To 1997 Cable Retransmission Royalty Fund" ("Notice Of Intent"). On that same date I mailed by first class, United States mail, postage prepaid, certified and return receipt requested, the executed original of that document and five copies, to the Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. The Notice Of Intent was provided directly to a postal office employee at the U.S. Post Office, West Branch Station, Los Angeles.
2. On the afternoon of September 29, 1999, I received a telephone call from Gina Giuffreda of the U.S. Copyright Office, informing me that the Notice of Intent had been received on September 29, 1999, one day after the due date of September 28, 1999. Ms. Giuffreda informed me that the mailing envelope reflected a September 22, 1999 postmark, but that the date of receipt of the Notice of Intent controls whether the Notice of Intent was timely filed, not the date of postmark.
3. As an authorized representative of Independent Producers Group, I believed in good faith that the postmark date, not the date of receipt, controlled whether the Notice Of Intent would be considered timely.
4. Independent Producers Group represents the interests of dozens of rightsholders in the CARP proceedings, including such notable producers as DreamWorks, A&E Television, and the Academy of Television Arts and Sciences.
5. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are accurate and true.


Raul Galaz

September 29, 1999

Exhibit "B"

GENERAL COUNSEL
OF COPYRIGHT

OCT 1 1999

RECEIVED

Z 444 245 201

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	CARP
Street & Number	PO. 70977, Southwest Station
Post Office, State, & ZIP Code	20024 Wash. DC.
Postage	\$ 10.77
Certified Fee	\$ 1.40
Special Delivery Fee	\$ 0.00
Registered Delivery Fee	\$ 0.00
Return Receipt Showing to Whom & Date Delivered	\$ 1.25
Return Receipt Showing to Whom, Date, & Address	\$ 0.00
TOTAL Postage & Fees	\$ 13.42
Postmark or Date	

PS Form 3800, April 1995

Exhibit "C"

REPRODUCED BY PERMISSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOSE, CALIFORNIA

REPRODUCED BY PERMISSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOSE, CALIFORNIA

Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

GENERAL COUNSEL
OF COPYRIGHT

OCT 6 1999

RECEIVED

In the Matter of)
) Docket No. 99-5 CARP CD 97
1997 Cable Royalty Fund)

OPPOSITION TO MOTION TO ACCEPT LATE FILING

Program Suppliers hereby oppose the "Independent Producers Group Motion To Accept Late Filing" submitted by Independent Producers Group ("IPG") as offering sufficient grounds to justify acceptance of IPG's untimely notice of intent to participate in the captioned proceeding. IPG's motion does not demonstrate the necessary good cause to allow a late filing. In addition, IPG's motion and notice are likely to bog down these proceedings in a morass of problems and jeopardize the pending settlement of the 1993-97 cases. Such a result would seriously harm and prejudice the parties.

IPG's motion to accept the late filing offers no valid grounds to excuse the lateness of the filing. The primary reason proffered for the delay was an alleged good faith belief that the date of mailing controlled the timeliness of the filing. Motion ¶ 2 and Galaz Declaration ¶ 3. No explanation was offered of the basis for the alleged good faith belief, and, indeed, none exists. Given the clarity of the regulations and the Notice, 64 Fed. Reg. 41473 (July 30, 1999), on this very point, it would be impossible to form a belief that the date of mailing controlled the timeliness of a notice of intent to participate.

Although not mentioned in the motion, IPG's reliance on the date of mailing apparently stems from the regulations pertaining to the filing of claims to cable royalty fees. 37 C.F.R. § 252.4(a)(2). The filing of claims regulations do not govern the

procedures for filing notices of intent to participate. Notices of intent are governed by a wholly different section of the regulations. 37 C.F.R. § 251.45. That section makes clear that the deadline established in the Federal Register controls the timeliness of the filing of a notice of intent: "Such notice shall also establish *a date certain* by which parties wishing to participate in the proceeding *must file* with the Librarian a notice of intent to participate." § 251.45(a) (emphasis added).

It is difficult to believe that Mr. Galaz, who is an attorney, would not have reviewed all the regulations governing the royalty distribution process, and, having done so, would not have recognized the difference in the procedures for filing a royalty claim and those for filing a notice of intent to participate. But, even if this unlikely scenario were true, the importance of meeting the announced deadline was clearly spelled out in the Notice, 64 Fed. Reg. 41473. IPG's Comments and Notice refer to this Notice, which establishes that IPG had specific knowledge of all its contents. The importance of the filing deadline and the consequences of not meeting that deadline are explicitly addressed in the Notice:

Participants must advise the Office of the existence of all controversies, Phase I or Phase II, by the end of the comment period. The Office will not consider controversies which come to its attention after the close of the comment period. Failure to file a timely Notice of Intent to Participate shall also preclude a party from participating in this proceeding.

Id. This language could not be more direct. In light of this language, it is simply impossible to maintain that anyone who read the Notice could have a good faith belief that the date of mailing controls the timeliness of the filing.

IPG's "should've" argument — that "[a]llowing for normal mail delivery, the Notice of Intent should have been received well prior to the September 28, 1999

deadline" — is of no moment. The Office cannot deal with what should have happened, but only with what actually happened. Moreover, the responsibility for assuring that the filing was timely received by the Office prior to the deadline rests solely with IPG, not with the Postal Service or with the Office. There are numerous alternative means by which IPG could have assured that the filing was received before the deadline. It chose one that should've, but didn't, work, and now it must accept the consequences of that choice.

IPG attempts to minimize its failure to file on time by contending that its notice "only serves to preserve the rights of [IPG] with respect to Phase II participation." Motion at ¶ 3. First of all, IPG has no rights to preserve until it has filed a timely notice. *See* Notice, 64 Fed. Reg. 41473 ("Failure to file a timely Notice of Intent to Participate shall also preclude a party from participating in this proceeding"). Preserving rights is not the only, or, indeed, even the primary, reason for timely notices of intent to participate; rather, an equally important reason for the notices is to inform the Office and the parties of all controversies, Phase I and Phase II, that can be expected in a proceeding. Only after all parties (Phase I and Phase II) are known can the Office and the parties make informed decisions on a range of issues, starting from settlement through procedures and timing of hearings.

The need for timely information about all participants in Phase I and Phase II is heightened in the instant circumstances by the pending 1993-97 settlement. As the Office is aware, that settlement is contingent on the remaining royalties in those years being distributed by October 28. That deadline depends, in turn, on the Office being assured that it has retained sufficient reserves to cover any and all Phase II controversies. Such

assurance can only be approached after all potential Phase II claimants and the extent of their claims is known. IPG's untimely filing asserting unknown claims by largely unidentified claimants against several Phase I categories has, to say the least, caused considerable consternation among the Phase I parties who must scramble to identify an appropriate reserve to cover IPG's late and unspecified claims. It can be assumed that the Office will have equal difficulty in assessing the validity of the proposed reserves in light of IPG's untimely and vague notice. These adverse effects of the untimely IPG filing could severely prejudice the parties by threatening the ability of the Office to distribute funds by October 28, and thus creating a real possibility of undoing a major settlement.

IPG is simply wrong that parties "have not yet turned their attention to Phase II negotiations or proceedings" and will not be prejudiced by acceptance of IPG's late filing. Motion at ¶ 3. Parties have spent considerable time and attention in attempting to identify and to quantify, as well as to resolve, Phase II issues in all the 1993-97 distribution cases, including the instant matter. IPG's late filing has disrupted those efforts, and has the potential to do even greater harm.

In sum, IPG's proffered justification of good faith reliance on the date of mailing as controlling does not hold up in the face of the clear, explicit language of the governing regulation and the Notice issued in this matter. No other good cause was proffered to justify waiver of the deadline. Acceptance of IPG's late filing will harm and prejudice the parties in their efforts to determine appropriate Phase II reserves. That, in turn, could jeopardize the pending 1993-97 settlement, which would have a devastating effect on the entire distribution process.

IPG's claims of severe prejudice (Motion ¶ 4) by not accepting the late filing are invalid. Without attempting to detail all the reasons why IPG's claims appear to be invalid, several are apparent on the face of IPG's papers. IPG itself did not file a claim for cable copyright royalties. While this is not entirely dispositive, it means that any Phase II claims made by IPG require that the individual owners whom it purports to represent must have filed valid 1997 claims. Although IPG asserts its "represents the interests of dozens of rightsholders in the CARP proceedings," it lists only three by name: DreamWorks, A&E Television and the Academy of Television Arts and Sciences. *Id.* None of these named parties filed a 1997 claim for cable copyright royalties, and thus all are ineligible to receive any 1997 royalties. Because the identity of the "dozens of rightsholders" is unknown at this time, it is impossible to determine how many of them also failed to file a claim, making them ineligible as well to receive 1997 cable royalties. Obviously, there is no reason to hold Phase II hearings regarding claims by parties who are ineligible to receive royalties.¹

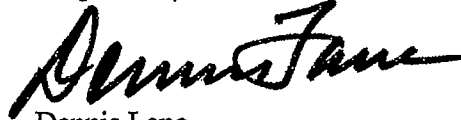
IPG's other ground for claiming prejudice is also unavailing. IPG states that unless it is allowed to participate, "royalties owing to such producers could be forfeited." Motion ¶ 4. Any such funds would not be forfeited, but would be considered unclaimed funds for further distribution. The treatment of unclaimed funds was raised and resolved in the 1978 distribution proceeding by the CRT, and has now been an accepted distribution practice for two decades. A portion of unclaimed funds in many, if not all,

¹ Mr. Galaz filed a claim ("Claim 176") on behalf of Artist Collections Group, Ltd. and Worldwide Subsidy Group, but no other claimant. Because the regulations require that all joint claimants to a joint claim be named, 37 C.F.R. § 252.3(a)(3), these two named entities are the only ones covered by Claim 176. Neither of these entities is named in IPG's papers as asserting a Phase II claim. It is worth noting that Claim 176 identifies "Unsolved Mysteries" as one of the programs. "Unsolved Mysteries" was a network program in 1997, and thus is not eligible to share in cable royalty distribution.

royalty years results from rights holders who fail to file, or who fail to file timely, claims for cable royalties. IPG's situation does not differ from those, and requires no special treatment.

WHEREFORE, Program Suppliers submit that the Copyright Office must deny IPG's motion for leave to file late and must reject IPG's late notice of intent to participate in Phase II of the 1997 cable royalty distribution proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis Lane", written in a cursive style.

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Attorneys for
PROGRAM SUPPLIERS

Dated: October 6, 1999

6-22-2000



In the Matter of

Distribution of the 1993, 1994, 1995,
1996 and 1997 Cable Royalty Funds

Docket No. 2000-2 CARP CD 93-97

LIBRARY
OF
CONGRESS

ORDER

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OFFICE

This Order addresses two motions filed by the parties in this Phase II cable royalty distribution proceeding. The first, a motion filed by MPAA-represented Program Suppliers' ("PS"), seeks dismissal of the claim filed by Independent Producer's Group ("IPG"). The second is IPG's motion to dismiss certain portions of Program Suppliers' written direct case.

I. Program Suppliers' Motion to DismissCopyright
Arbitration
Royalty
Panels

Program Suppliers move to dismiss the Phase II claim filed by IPG against the syndicated program category. Program Suppliers allege that IPG's claim (marked as No. 176 by the Copyright Office) does not satisfy the Office's rules and regulations, that none of the entities claimed by IPG are listed in claim No. 176 or filed their own individual claims, and that the documents authorizing IPG to represent the claimants it has listed in its direct case are signed after the deadline for filing 1997 claims and thus convey no rights to seek 1997 royalties. In addition, Program Suppliers allege that many of the program titles listed by IPG as belonging to its claimants actually belong to Program Suppliers' claimants.

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IPG filed an opposition to Program Suppliers' motion, and Program Suppliers replied. Because Program Suppliers' motion, if granted in all respects, would obviate the need for this proceeding, the Library is addressing it first and will resolve pending discovery motions at a later date.

Facsimile:
(202)252-3423**Discussion***Background*

Program Suppliers' motion invites the Library to wade into the turbid waters of representation and ownership of copyrighted syndicated programs and toss out the red herrings prior to the convening of the CARP. In this instance, Program Suppliers allege that the entire ocean, or at least IPG's portion of it, is full of nothing but red herrings. Before even contemplating such a task, the Library examines the law regarding the filing of claims to cable royalties, and the regulation it has promulgated.

The Copyright Act identifies who is eligible for collecting section 111 compulsory license fees, and generally what they must do to claim royalties. Section 111(d)(3) of the Copyright Act provides that section 111 royalty fees shall "be distributed to those among

the following **copyright owners** who claim their works were the subject of secondary transmissions by cable systems during the relevant semiannual period." 17 U.S.C. 111(d)(3) (emphasis added). The copyright owners specified in the subsection are the owners of nonnetwork programs contained on distant signals retransmitted by cable systems.

Section 111(d)(4)(A) describes what must be done to claim royalties under section 111:

During the month of July in each year, every person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian of Congress shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of statutory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

17 U.S.C. 111(d)(4)(A). This is all the Copyright Act has to say about the filing of cable claims. The Copyright Royalty Tribunal ("CRT"), where cable claims were filed and resolved prior to the Library assuming the task in 1993, adopted regulations governing the filing of cable claims. Section 302.7(a) of the Tribunal's regulations provided:

During the month of July of each year, every person claiming to be entitled to compulsory license fees for secondary transmissions during the preceding calendar year shall file a claim to such fees in the office of the Copyright Royalty Tribunal. No royalty fees shall be distributed to copyright owners for secondary transmissions during the specified period unless such owner has filed a claim to such fees during the following calendar month of July. For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require. A joint claim shall include a concise statement of the authorization for the filing of the joint claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements, for purposes of this filing and fee distribution.

37 C.F.R. 302.7(a) (1993). Subsection (b) of that regulation required the full name and address of the "person or entity claiming compulsory license fees," along with identification of at least one secondary transmission of that person's or entity's program by a cable system.

The purpose of the Tribunal's regulations governing the filing of cable claims is evident: identify who the claimants are to the royalty pool, and assure that they have asserted a prima facie claim for section 111 royalties. While the regulation states that "every person claiming to be entitled to compulsory license fees" may file a claim, the regulation further states that "[n]o royalty fees shall be distributed to copyright owners for secondary transmissions during the specified period unless such owner has filed a claim to such fees during the following calendar month of July." 37 C.F.R. 302.7(a) (1993).

When the Tribunal's responsibilities were assumed by the Library, the Library proposed changes to the regulations for filing cable claims. Proposed new section 252.2 read:

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

59 FR 2550, 2564 (January 18, 1994). The Library did not state why it changed slightly the wording of the former Tribunal's regulation, but did propose a new section 252.3 which incorporated some of the same principles. Section 252.3(a)(3) stated that "[i]f the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim [is required]. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements." 59 FR at 2565. The Library also proposed section 252.3(e) which stated that "[a]ll claimants filing a joint claim shall make available to the Copyright Office, other claimants, and, where applicable, a Copyright Arbitration Royalty Panel, a list of all individual claimants covered by the joint claim." 59 FR at 2565.

One commentator to the Notice of Proposed Rulemaking ("NPRM"), the Public Broadcasting Service ("PBS"), raised concerns about section 252.3(e), wondering if, in the case of a joint claim, each claimant was required to identify at least one secondary transmission. The Library responded:

We acknowledge that § 252.3 as proposed in the NPRM muddies the waters for the filing of cable royalty claims, and of satellite royalty claims as well. We are troubled, however, by changing what had been a longstanding requirement at the Tribunal for obliging *all* claimants to identify at least one secondary transmission of their copyrighted works. While such requirement does undoubtedly add to the time and expense burdens of joint claimants such as PBS, it is not without purpose. The law states plainly that cable compulsory license royalties are only to be distributed to "copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period." 17 U.S.C. 111(d)(3). To support such a claim, each claimant may reasonably be asked to identify at least one secondary transmission of his or her work, thus permitting the Copyright Office to screen the claims and dismiss any claimants who are clearly not eligible for royalty fees. The requirement will also help to reduce time spent by a CARP determining which claimants have a valid claim: if only one secondary transmission is identified for one of the joint claimants, then it could not readily be determined if the other claimants were even eligible for cable royalties.

In an effort to end this confusion we are deleting subsection (e) with its requirement that joint claimants submit a list identifying all the claimants. Instead, we are amending subsection (a)(4) to require that each claimant to a joint claim, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, must identify at least one secondary transmission of his or her works.

59 FR 23964, 23979 (May 9, 1994).

A hail of protest followed the Library's change of the joint claims rule. Several copyright owner groups, including Program Suppliers, argued that a requirement that each joint claimant submit evidence of a secondary transmission was unnecessary and expensive and was not a practice observed by the CRT. Program Suppliers went further and argued that the Copyright Office should refrain from any examination or screening of claims as a regular practice, and leave such activities and eligibility issues to the claimants to raise through motions either to the Librarian or the CARPs. 59 FR 63025, 63027 (December 7, 1994).

On reconsideration, the Library dropped the requirement that each joint claimant identify a secondary transmission. We went on to note that "[t]he amended rule, however, does require each joint claim to identify all claimants participating in the joint claim. Those who are not identified in the joint claim may not be added to it after the filing period." *Id.* at 63028.¹ The amended section 252.3(a)(3) of the rules, which is the current rule and was in force in 1997, reads in pertinent part: "If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint claim [is required]." *Id.* at 63042.

Analysis

As the above discussion reveals, the requirements of section 252 of the rules for the filing of cable claims are critical to the process of distributing royalties collected under the cable compulsory license. When a joint claim is filed, it must identify each of the claimants that are a part of the claim at the time the claim is filed. Parties may not be added to the joint claim after the fact because no royalty fees will be distributed to a party that has not filed a timely claim.

The Library has examined claim No. 176, received by the Copyright Office on July 20, 1998. The claim states that Artists Collections Group, Ltd. filed the claim on behalf of itself and Worldwide Subsidy Group, although the claim is signed by the President of Worldwide Subsidy Group. The claim identifies the nature of the copyrighted works as motion pictures and identifies two programs, "Unsolved Mysteries" and "Garfield and Friends," as being subject to secondary transmissions by cable systems during 1997. IPG states in its written direct case that Artists Collection Group has withdrawn its claim because it did not represent any copyright owners whose programs were retransmitted by cable systems during 1997. IPG Direct Case at 3, n.2. This leaves Worldwide Subsidy Group as the sole identified claimant.

It is clear from IPG's pleadings that Worldwide Subsidy Group is not a copyright owner, but is "either the transferee or agent of copyright owners for purposes of this proceeding." IPG Opposition at 4. The question arises whether, under the Library's rules, a noncopyright owner party can file a claim to cable royalties. The Tribunal's old rules could be read as permitting only copyright owners and performing rights societies to file royalty claims. See 37 C.F.R. 302.7(a) (1993) ("No royalties shall be distributed to copyright owners ... unless such owner has filed a claim to such fees during the following calendar month of July," but performing rights societies are not required to obtain separate authorizations from members or affiliates). The Library's rules, however, state that "any party claiming to be entitled to cable compulsory license royalty fees" may file a claim.

¹ An exception to this requirement was made for performing rights societies, such as ASCAP and BMI. That exception, however, has no application in this proceeding.

37 C.F.R. 252.2. The rule is broad enough to allow noncopyright holders, who are acting as agents or representatives of copyright owners of nonnetwork programming retransmitted by cable systems, to file a claim. It was permissible, therefore, for Worldwide Subsidy Group to file a claim. However, that does not answer the question whether Worldwide Subsidy Group had to identify the copyright owners on whose behalf it was filing the claim.

Section 252.3(a)(3) requires that all claimants to a joint claim must be identified. As discussed above, this is required to assure that royalties are not distributed to copyright owners that have not filed a timely claim. With the dismissal of Artists Collections Group, the only named claimant on claim No. 176 is Worldwide Subsidy Group. However, in exhibit D of its written direct case, IPG, the representative of Worldwide Subsidy Group, lists the programs and copyright owners or distributors which it alleges comprise its claim. These owners and distributors are. Abrams Gentile Entertainment; Beacon Communications; Cosgrove-Meurer Productions; Flying Tomato Films; Funimation; Golden Films; Jay Ward Productions; Lacey Entertainment; Litton Syndications; Mainframe Entertainment; Paws, Inc.; Raycom Sports; Sandra Carter Productions; Scholastic Productions; Tide Group d/b/a Psychic Reader's Network; and the United Negro College Fund. None of these parties are listed on claim No. 176. Furthermore, only one of these, Lacey Entertainment, filed a claim with the Copyright Office.

IPG asserts that it was not required to list these copyright owners and distributors because it did not file a joint claim. Rather, IPG submits that claim No. 176 is a single claim with Worldwide Subsidy Group acting as agent or transferee² for all the copyright owners and distributors identified in exhibit D. IPG argues that filing a claim in this fashion is permissible. We do not agree. The law is clear that only those parties whose works were the subject of secondary transmissions are entitled to a distribution of royalties, and it is only those parties on whose behalf a claim may be filed. 17 U.S.C. 111(d)(3), (d)(4)(A). The Library rules permit the filing of joint claims, provided that the individual claimants are identified to assure that they have indeed filed timely claims. But the rules do not permit the filing of a single claim by a party that purports to represent a list of unidentified copyright owners. If IPG's position were accepted, the requirement of a timely-filed claim would be flouted. In that instance, a single party claiming to represent a myriad of unidentified copyright holders and distributors could file a single claim and then, at a future date, claim that the filing covered these unidentified parties. A copyright owner would never have to worry about submitting a cable claim so long as the owner aligned itself with one of the representative parties (such as Worldwide Subsidy Group) prior to the filing of the written direct cases. As we said in the preamble to our final rules

² IPG asserts that it is the transferee of the right to collect cable royalties in certain instances, but does not assert that it is the transferee of one or more of the 17 U.S.C. 106 exclusive rights granted by copyright. If IPG were the transferee of the relevant exclusive rights, it would have standing to submit a claim on its own behalf.

on the filing of joint cable claims, a joint claim cannot be amended after the July filing period to add new parties, because those parties have not filed a timely claim. 59 FR at 63028. IPG's interpretation would render this language, and the law, meaningless because it would never be possible to determine whether a copyright owner or distributor filed a timely cable claim.

Because Worldwide Subsidy Group appears not to be a claimant in its own right and purports to have filed a claim on behalf of many other claimants, claim No. 176 must be considered a joint claim in this proceeding to have validity. However, Worldwide Subsidy Group did not comply with the rules for the filing of joint claims. Because of this failure, IPG's case could be dismissed. Nevertheless, the Library cannot say with certainty that all previous claims filed in cable royalty proceedings have listed all joint claimants. It is sometimes the case that the Copyright Office will receive a single claim filed by a production company that does not identify any joint claimants. Whether this production company owns all or some of the copyrights represented by the claim, or is just a representative of unidentified copyright owners, is unknown to the Office. To the Library's knowledge, these claims have not been challenged in the past, and this is a case of first impression. Consequently, the Library is not inclined without prior warning to strictly enforce the requirement that all owners and distributors be identified in a joint claim. However, what is clear, and what the law requires, is a factual determination as to which of the owners and distributors identified by IPG in exhibit D of its written direct case were in fact represented by Worldwide Subsidy Group at the close of the filing period for 1997 cable claims. Any party listed in exhibit D (with the exception of Lacey Entertainment, which filed its own claim) that was not represented by Worldwide Subsidy Group before August 1998 cannot be said to have filed a timely claim, and therefore testimony contained in IPG's written direct case regarding such party must be stricken.

Both Program Suppliers and IPG have offered information and argument as to the status of representation of the exhibit D parties. The status of each of these parties is a factual inquiry and is best resolved by the CARP. In designating this matter to the CARP, we offer some decisional guidelines. First, because Worldwide Subsidy Group did not list any joint claimants, IPG has the burden of proving that it represented each of the exhibit D parties for distribution of 1997 cable royalties on or before July 31, 1998. Second, IPG must submit written proof of representation for each exhibit D party. Written proof is required because claim No. 176 does not identify any of the exhibit D parties, and because testimonial evidence alone will not preserve the integrity of the law and the regulations which prohibit adding parties to a joint claim after the fact. Proof must be in the form of written agreements of representation between IPG and each of the exhibit D parties executed on or before July 31, 1998. Finally, if the CARP determines that one or more of the exhibit D parties were not validly represented by Worldwide Subsidy Group for distribution of 1997 cable royalties on or before July 31, 1998, the CARP must strike that portion of IPG's written direct case related to that party or parties.

II. IPG's Motion to Strike

IPG moves to strike reference to certain claimants and programs in Program Suppliers' written direct case. IPG submits that Program Suppliers "signed up" for representation Lacey Entertainment and General Mills, Inc. after the September 28, 1999, deadline for filing Notices of Intent to Participate and that because these parties did not file their own timely Notices, they are no longer parties to this proceeding. IPG also reserves the right to challenge other claimants represented by Program Suppliers if evidence reveals that they did not engage Program Suppliers to represent them until after the deadline.³ Program Suppliers oppose IPG's motion.

Discussion

The cable royalty distribution process is a straightforward one. As described above in the discussion regarding Program Suppliers' motion, all parties claiming to be entitled to a distribution of cable royalties must submit a timely-filed claim. This is a statutory requirement. The statute says nothing more about how the proceeding is run after that point (other than describing the creation and operation of a CARP), and leaves these matters to the Library. 17 U.S.C. 111(d)(4)(B). We have established rules as to what must be done prior to the convocation of the CARP. Any claimant wishing to appear before the CARP and present evidence must file a Notice of Intent to Participate. 37 C.F.R. 251.45(a). As we have said on numerous occasions, failure to file a timely Notice may result in a dismissal of the claim. See, e.g. 64 FR 41473 (July 30, 1999)(this proceeding); 61 FR 49799 (September 23, 1996)(1993 and 1994 cable Phase I); 62 FR 48894 (September 17, 1997)(1995 cable Phase I). Certainly not all claimants appearing on the claims list must file their own Notice. These parties may be represented by a party that files a Notice on their behalf and represents them throughout the course of the proceeding. The question presented by IPG's motion is: what happens when a claimant is not represented by someone else at the time Notices of Intent to Participate are due, and then later seeks representation from one of the parties that has filed a timely Notice?

IPG submits that Lacey Entertainment's and General Mills' failure to file a timely Notice of Intent to Participate has the same effect as failing to timely file a claim. We disagree. Timely submission of a claim is a statutory requirement—we lack the authority to waive the requirement. A timely Notice of Intent to Participate is a regulatory requirement, and it is a well-established practice that a party wishing to file an untimely Notice may move for leave to do so. Such motions are evaluated under a two-part test: 1) the disruption to the proceeding caused by allowing the moving party to participate; and 2) good cause for accepting the late-filed Notice. Order in Docket No. 99-6 CARP

³ Production of documents relating to Program Suppliers' representation of its claimants is the subject of a pending discovery motion.

DTRA (November 30, 1999)(accepting late-filed Notices of Intent to Participate from seven different parties); Order in Docket No. 99-6 CARP DTRA (December 22, 1999); Order in Docket No. 99-3 CARP DD 95-98 (August 5, 1999). Program Suppliers recognize this and assert that representation of a claimant after the date for Notices of Intent to Participate is not a problem, particularly where "Program Suppliers have a good faith belief as to the composition of their group and the potential controversies at the filing date for Notices of Intent, regardless of whether all potential claimants to their group have actually signed representation agreements with MPAA by that time." Program Suppliers' Opposition at 3.

Although the importance of the Notice of Intent to Participate requirement is not on par with the filing of claims requirement, the question remains as to what happens when a party that submits a Notice on behalf of a claimant does not in fact represent the claimant at the time the Notice is filed, but does represent the claimant prior to the filing of the written direct cases. We note that the rule requires that "parties wishing to participate in the proceeding" must file a Notice. 37 C.F.R. 251.45(a). Unlike the filing requirements for joint claims, the rule does not require that the Notice identify all claimants on whose behalf the Notice is filed. Some parties, in both royalty distribution and rate adjustment proceedings, do as a matter of practice identify the entities on whose behalf the Notice is filed. Others do not. The current regulation is not a model of clarity, and the Library is reluctant to decide the fate of the claims of Lacey Entertainment and General Mills (or other claims Program Suppliers seeks to represent) based on a ruling, in a case of first impression, on the meaning of an imprecise regulation.

Fortunately, this motion can be resolved without answering that difficult question. As already noted, on several occasions the Library has received late-filed Notices of Intent to Participate from parties that did not file their own separate Notices and were not identified as being encompassed by a timely-filed Notice. We have traditionally accepted these late-filed Notices, provided that they satisfy the two-part test referred to above.

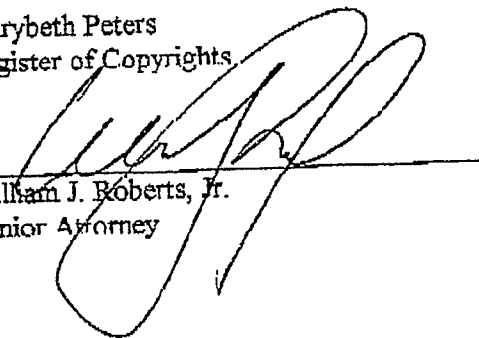
Because the Library has authority to grant late-filed Notices of Intent to Participate--authority it does not have with respect to late-filed cable royalty claims--the appropriate resolution to this dispute is to permit General Mills and Lacey Entertainment the opportunity to submit motions to accept late-filed Notices. In addition, any other claimants that were not represented by Program Suppliers on the date that Notices of Intent to Participate were due in this proceeding should also be given the opportunity to file motions to accept their late-filed Notices. All such motions must be submitted to the Library on or before June 30, 2000. The Library will consider these motions consistent with the two-part test for sufficiency most recently articulated in the above-described Orders in Docket No. 99-6 CARP DTRA.

Wherefore, **IT IS ORDERED** that Program Suppliers' motion to dismiss IPG's case is designated to the CARP for resolution consistent with the terms of this Order. **IT IS FURTHER ORDERED** that IPG's motion to strike Lacey Entertainment's and General Mills' claims from Program Suppliers' written direct case **IS DENIED** without prejudice, and that Lacey Entertainment, General Mills and any other claimant not represented by Program Suppliers at the time Notices of Intent to Participate were due in this proceeding may file motions to accept late-filed Notices no later than June 30, 2000. Following the disposition of those motions, IPG may renew its motion if and to the extent that it is not encompassed in or precluded by the rulings on those motions.

SO ORDERED.

Marybeth Peters
Register of Copyrights

BY:


William J. Roberts, Jr.
Senior Attorney

DATED: June 22, 2000

[illegible]



6-5-01

In the Matter of

Distribution of 1993, 1994, 1995, 1996
and 1997 Cable Royalty Funds

Docket No. 2000-2 CARP CD 93-97

LIBRARY
OF
CONGRESS

ORDER

COPYRIGHT
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On April 16, 2001, the Librarian of Congress received the report of the Copyright Arbitration Royalty Panel (CARP) in the above-captioned proceeding. Both the Motion Picture Association of America (MPAA) and the Independent Producers Group (IPG), the two litigants in this proceeding, have filed their petitions to modify and/or set aside the determination of the CARP, and their replies to those petitions.

Copyright
Arbitration
Royalty
Panels

After a review of the report and examination of the record in this proceeding, the Register recommends that the Librarian reject the decision of the CARP, and remand the case to the CARP for modification of the decision. The Register concludes that the CARP acted arbitrarily in three ways. First, the CARP did not follow the decisional guidelines and intent of the June 22, 2000, Order issued in this proceeding which directed the CARP to dismiss any claimants listed in exhibit D of IPG's written direct case that did not have a written representation agreement with Worldwide Subsidy Group on or before July 31, 1998.

Box 70977
West
Washington
D.C. 20024

Second, the CARP arbitrarily included two programs--*Critter Gitters* and *Bloopy's Buddies*--in the claim of Litton Syndications, Inc. (represented by IPG) when IPG did not introduce any evidence as to the value of those programs. In addition, the CARP arbitrarily assigned the program *Dramatic Moments in Black Sports History* to IPG without adequate explanation of its decision.

Telephone:
(202) 707-8380

Third, the CARP acted arbitrarily in awarding 0.5% of the 1997 cable royalties to IPG, and the remaining 99.5% of the royalties to MPAA, because it did not provide any explanation of the methodology or analysis it used to arrive at these numbers.

Facsimile:
(202) 252-3423

A full discussion of the Register's reasons for these conclusions shall appear in the final order in this proceeding published in the Federal Register.

Wherefore, the Register recommends that the Librarian reject the CARP's report and remand to the CARP to take the following actions in modifying its report:

1. That the CARP award royalties to IPG only on the claims of Litton Syndications and not award any royalties to IPG based upon the other claimants in exhibit D of IPG's written direct case;
2. That the CARP credit Litton with only the following programs: *Algo's Factory*; *Jack Hanna's Animal Adventures*; *Harvey Penick's Golf Lessons*; *Mom USA*; *Nprint*; *Sophisticated Gents*; *Just Imagine* and *The Sports Bar*;

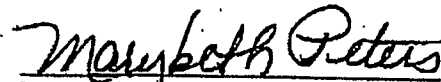
3. That the CARP explain its reasons for crediting *Dramatic Moments in Black Sports History* to Litton's claim; and, if it concludes that its initial decision was correct, add the program to the list contained in #2;

4. That the CARP enter a new distribution percentage for IPG, based only on the claim of Litton and the programs listed in #2 and, if appropriate, in #3, and allocate the remainder of the royalties to MPAA; and


5. That the CARP fully explain its reasons and methodology for the distribution percentages it assigns to IPG and MPAA.

The Register further recommends that the CARP be given until June 20, 2001, to report its modified decision to the Librarian and that section 251.55 of the rules, 37 C.F.R., apply to the CARP's modified report, except that the periods for petitions and replies be shortened from 14 days to 7 days for petitions, and from 14 days to 5 days for replies, due to the proximity of the time period for issuance of the Librarian's final order in this proceeding.

SO RECOMMENDED.


Marybeth Peters
Register of Copyrights

SO ORDERED.


James H. Billington
The Librarian of Congress

DATED: June 5, 2001

EXHIBIT G

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
MAY 29 PM 4:45

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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2015
7P

UNITED STATES OF AMERICA,)
MAYER-WHITTINGTON)
CLERK)
Plaintiff,)
)
v.)
)
Raul C. GALAZ,)
)
Defendant.)
_____)

Criminal No:

02-230

FILED

MAY 30 2002

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

PLEA AGREEMENT

The defendant, defense counsel and the undersigned on behalf of the United States have executed the attached plea agreement in resolving criminal prosecution of the identified activities.

May 29, 2002
DATE

ROSCOE C. HOWARD, JR.
United States Attorney
for the District of Columbia

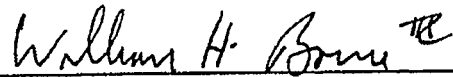
By: William H. Bowne III
William H. Bowne, III
Trial Attorney, Crim. Div., Fraud Section
1400 New York Avenue, N.W.
Washington, D.C.
Tel: 202-514-7023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Plea Agreement in this case was served this day by first-class mail on counsel for defendant Raul C. Galaz at the following address:

Whitney C. Ellerman, Esq.
Janis, Schuelke & Wechsler
1728 Massachusetts Avenue, N.W.
Washington, D.C.

Dated: May 29, 2002



William H. Bowne, III
Trial Attorney, U.S. Dept. Of Justice
Criminal Division, Fraud Section
10th and Constitution Avenues, N.W.
Bond Building
Washington, D.C. 20530
Tel: (202) 514-7023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

RAUL GALAZ

CRIMINAL NO.:

VIOLATION
18 U.S.C. § 1341
(Mail Fraud)

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, by the Fraud Section and the defendant, Raul Galaz, and his attorney agree as follows:

1. Defendant Galaz will waive Indictment and plead guilty in the United States District Court for the District of Columbia to the crime charged in the Information filed in the matter charging one count of Mail Fraud in violation of Title 18 United States Code § 1341.
2. Defendant Galaz is entering this agreement and is pleading guilty freely and voluntarily without promise or benefit of any kind, other than contained herein, and without threats, force, intimidation, or coercion of any kind.
3. The defendant knowingly, voluntarily, and truthfully admits the facts contained in the attached Information as the factual basis for Plea.
4. The defendant shall enter a plea of guilty to a one-count Information charging defendant with mail fraud, (18 U.S.C. § 1341), for engaging in a scheme and artifice to defraud the United States and the Motion Picture Association of America of money and property by making false statements and representations to the United States Copyright Office and to the Motion Picture Association of America and by giving materially false sworn testimony in a statutorily mandated administrative proceeding convened by the Library of Congress.
5. The defendant understands the nature of the offense to which he is pleading guilty, and the elements thereof, including the penalties provided by law. The charge

carries a maximum sentence of imprisonment for a term not to exceed five (5) years, a \$250,000 fine, or both, with a mandatory special assessment of \$100. The defendant understands that the Court may impose a term of Supervised Release to follow any incarceration, in accordance with Title 18, United States Code, Section 3583, and that, in this case, the authorized term of supervised release is not more than three years.

6. The defendant agrees to cooperate completely, candidly, and truthfully in the present investigation of a scheme to defraud the United States Copyright office and the Motion Picture Association of America. Specifically, the defendant agrees:

- a. To provide complete, truthful, and candid disclosure of information and all records, writings, tangible objects, or other requested materials of any kind or description that he has which relate directly or indirectly to the subject of this investigation;
- b. To answer completely, truthfully, and candidly all questions put to him by attorneys and law enforcement officials during the course of this investigation;
- c. To make himself available for interviews by attorneys and law enforcement officers of the government upon request and reasonable notice;
- d. Not to attempt to protect any person or entity through false information or omission, nor falsely to implicate any person or entity;
- e. To comply with any and all reasonable requests from federal government authorities with respect to the specific assistance that he shall provide;
- f. To answer, at trial, before the grand jury, or at any hearing or administrative proceeding arising out of this investigation, all questions put to him by the court or by the attorney for any party completely, truthfully, and candidly; and

- g. To provide a full and complete accounting of all assets to the Probation Office including real or intangible, held by him or in any other name for his benefit.

7. Pursuant to U.S.S.G. § 1B1.8, the United States and defendant agree that since defendant has agreed to cooperate with the United States, information provided by defendant about: 1) fraudulent claims and representations made in the name of Bill Taylor and Tracee Productions; 2) fraudulent claims and representations made in the names of eight other fictitious persons and associated companies identified paragraph 11 of Count 1 of the attached Information; and 3) false statements made during an administrative hearing conducted by a Copyright Arbitration Royalty Panel convened by the Library of Congress to determine 1997 copyright cable and satellite retransmission royalty distribution, shall not be held against him, except as follows:

- a. Information that was known to the United States prior to the date this plea agreement and the interview of the defendant pursuant to an interview agreement;
- b. in a prosecution for perjury or giving a false statement pursuant to paragraph 12 of this agreement; and
- c. if there is a breach of this agreement by defendant as determined under the provisions of paragraphs 11 and 12. In the event of such a breach, the United States retains the right to make use of information and statements provided by defendant as described in paragraph 11.

8. Nothing in this plea agreement restricts the Court's or the Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful or perjurious information or testimony.

9. In return for the defendant's full and truthful cooperation and his plea of guilty to the charges described in paragraph 1 of this agreement, the Fraud Section agrees to bring no additional criminal charges in the District of Columbia or any other judicial district against the defendant relating to or arising from the matters identified in the Criminal Information to which the defendant will plea guilty.

10. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the provision contained in paragraph 8 of this agreement. The parties understand that the prosecuting jurisdiction retains discretion over whether to use such information.

11. If defendant fails to make a complete, truthful, and candid disclosure of information to federal law enforcement officers, government attorneys, and grand juries conducting this investigation, or to the Court, and/or if he fails to comply with any other of the material conditions and terms set forth in this agreement, he will have committed a material breach of the agreement which will release the government from its promises and commitments made in this agreement. Upon defendant's failure to comply with any of the terms and conditions set forth in this agreement, the government may fully prosecute him on all criminal charges that can be brought against him. In such a prosecution, the United States will have the right to make derivative use of any statement made by defendant pursuant to this cooperation agreement, and to impeach defendant with any such statements. Defendant waives any right to claim that evidence presented in such prosecution is tainted by virtue of the statements he has made.

12. In the event of a dispute as to whether defendant has knowingly given materially false, incomplete or misleading information in fulfilling the terms of his cooperation agreement or whether defendant has knowingly committed any other material breach of this agreement, and if the United States wants to exercise its rights under

paragraph 11, and if defendant so requests, the matter shall be submitted to the Court and shall be determined by the Court in an appropriate proceeding at which defendant's disclosures and documents shall be admissible and at which time the United States shall have the burden to establish the same by a preponderance of the evidence.

13. At all briefing and interviewing sessions conducted by investigators and/or attorneys for the government, defendant shall be entitled to the presence, advice, and assistance of counsel, unless waived.

14. This agreement is premised on the assumption that up to the time of sentencing defendant will have committed no new offenses since pleading guilty in this matter. Should it be determined, using a probable cause standard, that defendant has committed new offenses, the government may take whatever position it believes appropriate as to the sentence and terms of release. In addition, if in this plea agreement the United States has agreed to recommend or refrain from recommending to the sentencing judge a particular resolution of any sentencing issue, the Government reserves the right to full allocution in any post-sentence litigation in order to defend the sentencing judge's ultimate decision on such issues.

15. The defendant understands and acknowledges that the offenses with which he will be charged are subject to the provisions and guidelines of the "Sentencing Reform Act of 1984," Title 28, United States Code, Section 994(a).

16. The United States cannot and does not make any promise or representation as to what sentence the defendant will receive or what fines or restitution, if any, he may be ordered to pay. The defendant understands that the sentence and the sentencing guidelines applicable to his case will be determined solely by the Court, with the assistance of the United States Probation office, and that he will not be permitted to withdraw his plea regardless of the sentence calculated by the United States Probation office or imposed by the Court.

17. Defendant Galaz understands and acknowledges that he may receive any sentence within the statutory maximums for the offenses of conviction.

18. Defendant and the United States agree to recommend the following regarding the Sentencing Guidelines, but the Defendant understands such recommendations are not binding on the Probation Office or the Court, and further, that the Court may impose any sentence within the maximum statutory sentence for the offense of conviction:

- a. The applicable Guideline is § 2F1.1.
- b. The base offense level under § 2F1.1 is 6.
- c. The amount of loss and intended loss to the government was more than \$320,000 and less than \$350,000 and increases the offense level by 8 under § 2F1.1(b)(1).
- d. The offense involved more than minimal planning and warrants a 2 level increase under § 2F1.1(b)(2).
- e. The government reserves the right to argue and present evidence at sentencing demonstrating that the Defendant attempted to obstruct the administration of justice by providing materially false sworn testimony in a statutorily mandated administrative proceeding sanctioned by the Library of Congress and warrants a 2 level increase under § 3C1.1. However, the defendant reserves the right to argue the non-applicability of this enhancement.
- f. The United States will recommend a reduction of 3 levels under § 3E1.1(b), if the Defendant clearly demonstrates acceptance of responsibility for the instant offense, including cooperating fully with the presentence report writer, with the Court, and the Library of Congress in all proceedings arising from this matter, and by complying with the other provisions of this Agreement. If

the Defendant fails to do so, the United States may take any position it deems appropriate with respect to this reduction.

- g. The parties agree that no other sentencing enhancement provisions apply and recognize however, that their determination is not binding on either the Court or the Probation Department.
- h. The government reserves the right to argue at sentencing that correct adjusted offense level is 15 and that the Defendant should receive a sentence that includes an 18 month period of incarceration.

19. Defendant understands that the recommendations contained in paragraph 18 is not binding on the sentencing judge or the Probation Office, and that he will not be entitled to withdraw his plea in the event that either the sentencing judge or the Probation Office does not accept or follow these recommendations.

20. At the time of sentencing, the United States will advise the sentencing judge and the probation office of the full nature, extent, and value of any cooperation provided by defendant to the United States.

21. Defendant Galaz understands that the Court may impose a fine, restitution, costs of incarceration, and costs of supervision.

22. The United States reserves the right to allocute in all respects as to the nature and seriousness of the offense and to make a recommendation as to sentencing. The attorney for the United States will inform the sentencing Judge and the Probation Office of (1) this agreement; (2) the nature and extent of defendant Galaz's activities with respect to this case; and (3) all other information in its possession relevant to sentencing.

23. Defendant Galaz agrees that if the Court does not accept his plea of guilty to the Information, this agreement shall be null and void.

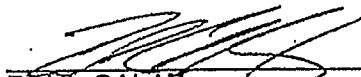
24. Defendant understands that this agreement is binding only upon the Fraud Section of the Department of Justice. This agreement does not bind the Civil Division of

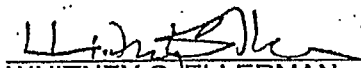
any United States Attorney's Office, the Tax Division of the Department of Justice, nor does it bind any state or local prosecutor. It also does not bar or compromise any civil or administrative claim pending or that may be made against the defendant. The United States will, however, bring this agreement and the full extent of defendant's cooperation to the attention of other prosecuting offices if requested.

25. This agreement constitutes the entire agreement between the United States and defendant Galaz. No other promises, agreements, or representations exist or have been made to defendant Galaz or his attorneys by the Department of Justice in connection with this case. This agreement may be amended only by a writing signed by all parties.

Dated this 29th day of May, 2002.

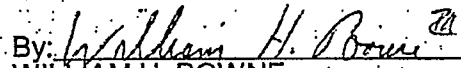
FOR THE DEFENDANT


RAUL GALAZ


WHITNEY C. ELLERMAN
Janis, Schuelke & Wechsler
1728 Massachusetts Ave., N.W.
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(202) 861-0600

FOR THE UNITED STATES

JOSHUA R. HOCHBERG
CHIEF, FRAUD SECTION
FOR THE DEPARTMENT OF JUSTICE

By: 
WILLIAM H. BOWNE
Trial Attorney, Fraud Section
U.S. Department of Justice
1400 New York Ave., N.W., Rm. 4114
Washington, D.C. 20005
(202) 514-7023

262224-0015
FP

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
2002 MAY 29 PM 4:45
**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
MAYER-WHITTINGTON
CLERK
Plaintiff,

v.

Raul C. GALAZ,
Defendant.

Criminal No: **02-230**

Count 1: 18 U.S.C. § 1341
(Mail Fraud)

FILED

MAY 30 2002

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

KENNEDY, JR. J. J.

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of Columbia charges:

COUNT 1 (Mail Fraud)

At all times relevant to this information:

Background

1. Defendant Raul C. GALAZ resided in either California or Texas and was an attorney licensed to practice law in the State of California specializing in the field of entertainment law.

2. The United States Copyright Office (hereinafter "Copyright Office") is located in the District of Columbia and is a component of the Library of Congress, a part of the legislative branch of the Government of the United States. The Copyright Office collects copyright royalty payments from cable and satellite companies that retransmit programs to system subscribers and distributes royalty fees to the owners of the copyrighted programs.

3. During July of each calendar year, copyright owners must file claims with the Copyright Office for the prior calendar year which identify the program copyright owner, the program claimed, one cable or satellite system involved in the program's retransmission, and date of retransmission.

4. The Motion Picture Association of America (hereinafter "MPAA") is located in the District of Columbia and is a non-profit trade organization which, on behalf of represented parties, collects copyright royalty payments from the Copyright Office and distributes the funds to copyright owners and/or beneficial interest holders.

5. In or about March 1998, defendant Raul C. GALAZ, as principal founder, started Artist Collections Group, a California limited liability company, created to collect cable and satellite copyright retransmission royalties and other secondary royalty rights throughout the world. Artist Collections Group conducted business under the name Worldwide Subsidy Group.

6. In or about August, 1999, defendant Raul C. GALAZ, as the principal founder, started Worldwide Subsidy Group, a Texas limited liability company created to collect cable and satellite copyright retransmission royalties in the United States. Worldwide Subsidy Group conducted business under the name Independent Producers Group.

The Scheme and Artifice to Defraud

7. Beginning in or about July 1995, and continuing through in or about March 2001, the exact dates being unknown, in the District of Columbia and elsewhere, the defendant,

Raul C. GALAZ,

devised and intended to devise a scheme and artifice to defraud and to obtain money and property from the Copyright Office and the MPAA, by means of materially false and fraudulent pretenses, representations and promises.

Purpose of the Scheme and Artifice

8. It was the purpose of the scheme for defendant Raul C. GALAZ to fraudulently obtain cable and satellite retransmission royalties from the Copyright Office and the MPAA by falsely representing that fictitious business entities were owners, or agents of owners, of copyrighted programs and were entitled to receive royalty fees, which fees defendant Raul C. GALAZ converted to his own personal use.

Manner and Means of the Scheme and Artifice

9. It was a part of the scheme and artifice that defendant Raul C. GALAZ identified programs retransmitted on cable and satellite systems for which retransmission royalties were previously unclaimed.

10. It was a further part of the scheme and artifice that defendant Raul C. GALAZ made fraudulent submissions to the Copyright Office in which he used false and fraudulent aliases and fictitious business entities to claim entitlement to cable and satellite system retransmission royalties as detailed below:

MAILING DATE	CLAIM YEAR	ALIAS	FICTITIOUS BUSINESS ENTITY	PROGRAM
7/28/95	1994	Bill Taylor	Tracee Productions	Garfield and Friends
7/30/96	1995	Bill Taylor	Tracee Productions	Garfield and Friends

7/05/97	1996	Bill Taylor	Tracee Productions	Garfield and Friends
7/20/97	1996	Bennett Stablich	Agman Animation	Bone Chillers
7/10/98	1997	Bennett Stablich	Agman Animation	Bone Chillers
7/22/97	1996	Harry Lough	BAL Productions	Unsolved Mysteries
7/18/97	1996	John Motoran	Blink Productions	Blinky Bill
7/28/98	1996	John Motoran	Blink Productions	The People's Court
7/08/97	1996	Helen Reed	Golden Parachute Distribution	Goosebumps
7/08/98	1997	Helen Reed	Golden Parachute Distribution	Goosebumps
7/13/97	1996	George Palt	KickFilm Distribution	Walker, Texas Ranger
7/13/97	1996	James Hitchman	Pointe Media	Moesha
7/24/97	1996	Joel Sachs	Sachs Associates	Bananas In Pajamas
7/12/98	1997	Joel Sachs	Sachs Associates	Bananas In Pajamas
7/03/97	1996	Fred Demann	Tier Media	Teenage Mutant Ninja Turtles
7/13/98	1997	Fred Demann	Tier Media	Teenage Mutant Ninja Turtles

11. It was a further part of the scheme and artifice that defendant Raul C. GALAZ used various methods, means, and devices to misrepresent to the Copyright Office and the MPAA that cable and satellite retransmission royalties were due and owing, including but not limited to:

(a) the use of false aliases in applications to and in correspondence with the Copyright Office and the MPAA;

(b) the use of a telephone answering service in the name of fictitious business entities;

(c) the rental of private mail depositories in the name of fictitious business entities for the purpose of receiving correspondence from the Copyright Office and the MPAA;

(d) the opening of accounts at stock brokerage firms for Tracee Productions using the alias Francisco Dias;

(e) the opening of additional stock brokerage accounts under multiple false aliases by transferring stolen proceeds;

(f) the opening of an offshore bank account in Antigua in the name of Artist Collections Group, a Bahamas corporation;

(g) the transferring of \$129,000.00 of stolen proceeds to the Artist Collections Group offshore bank account;

(h) arranging the retention of an attorney to negotiate a settlement with the original owners of the copyright royalty rights to "Garfield and Friends."

12. It was a further part of the scheme and artifice that defendant Raul C. GALAZ converted to his own benefit the following sums of money to which he was not entitled, based on his fraudulent submission of claims relating to "Garfield and Friends":

<u>MPAA Check Number</u>	<u>Date</u>	<u>Amount of the Check</u>
(1) 00005813	12/17/96	\$80,700.00
(2) 00005907	4/07/97	\$17,916.00
(3) 00006324	2/09/98	\$189,984.00
(4) 00006419	4/23/98	\$39,703.00

13. It was a further part of the scheme and artifice that defendant Raul C. GALAZ concealed and perpetuated his scheme by testifying falsely under oath at a statutorily convened Copyright Arbitration Royalty Panel administrative proceeding that: (1) he was not Bill Taylor; (2) he did not have any involvement or interest in companies he represented in particular, Tracee Productions and the other companies identified in paragraph 10; and (3) he never filed a claim without authorization.

Execution of the Scheme and Artifice to Defraud

14. On or about July 31, 1997, the exact date being unknown, in the District of Columbia and elsewhere, the defendant,

Raul C. GALAZ,

for the purpose of executing the above-described scheme and artifice, and attempting to do so, placed and caused to be placed in an authorized depository for mail matter, to wit, an envelope containing a Tracee Productions claim for 1996 copyright retransmission royalties for the program "Garfield and Friends" and caused such matter to be delivered by the United States Postal Service according to the directions thereon from California to the United States Copyright Office located in Washington, D.C.

All in violation of Title 18, United States Code, Sections 1341 and 2.

May 29, 2002
DATE

ROSCOE C. HOWARD, JR.
United States Attorney
for the District of Columbia

By: William H. Bowne III
William H. Bowne, III
Trial Attorney, Crim. Div., Fraud Section
1400 New York Avenue, N.W.
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